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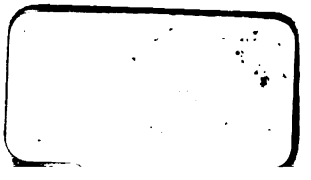

A

SUPPLEMENT

TO

MR. BARTON'S

PRECEDENTS IN CONVEYANCING.

VOL. I.—A—B.

G. WOODFALL, ANGEL COURT, SKINNER STREET, LONDON.

S: H: 1826.
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A

SUPPLEMENT

TO

MR. BARTON'S

PRECEDENTS IN CONVEYANCING,

CONTAINING

ALL THE MISCELLANEOUS ASSURANCES
THERE REFERRED TO,

AND ALSO

A GREAT VARIETY OF OTHER MINOR ASSURANCES NOT COMPRISED IN THAT WORK,

WITH

COPIOUS EXPLANATORY AND PRACTICAL NOTES.

By S. F. T. WILDE, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

The Third Edition.

TO WHICH ARE ADDED, A GREAT VARIETY OF

MERCANTILE AND COMMERCIAL PRECEDENTS,

AND ALSO

FORMS OF BILLS AND OTHER PROCEEDINGS IN PARLIAMENT,

SUITED TO PAROCHIAL AND COUNTY PURPOSES.

By CHARLES BARTON, Jun. of LINCOLN'S INN, Esq.

IN THREE VOLUMES.

VOL. I.—A—B.

LONDON:
HENRY BUTTERWORTH,
LAW BOOKSELLER AND PUBLISHER,
7, FLEET STREET, NEAR TEMPLE-BAR.

1826.

PREFACE.

On my first appearance before the Profession as an Author, it may be expected that I should express myself fearful of being accused of temerity, in attempting the revisal of a work originally compiled by so able a practitioner as Mr. Wilde; and indeed so conscious was I of the apparent justice as well as probability of such an accusation, that I should not have ventured upon so hazardous an undertaking, but at the express request of my Father, and under his kind promise of assistance should I in any case deem it requisite; this promise he has amply performed, and under such a sanction my veracity might be justly doubted were I to express any considerable degree of anxiety as to the success of my endeavours to render the present Edition more extensively useful than the former ones.

With a view of attaining this object, I have not merely substituted the later decisions and statutes in the room of those which have been overruled or repealed since the last Edition, but have introduced a very great number and variety of Precedents, which from my own experience, and the suggestions of others, appeared still to be wanting: a considerable portion of these will be found to relate more particularly to *commercial*, *parochial*, and *county* matters; in which all other collections of a similar kind, are, as it seems to me, extremely deficient.

I have also inserted forms of the different instruments requisite to carry into effect the various recent acts of Parliament for *erecting churches—enclosing wastes—repairing turnpike-roads—providing work-houses and other asylums for the poor, &c. &c.*; and which, where no forms are expressly pointed out by the acts themselves, I have endeavoured to frame with a scrupulous attention to the spirit of those from which they emanated.

I have moreover inserted what I conceive to be the requisite clauses and provisions in PRIVATE *acts of Parliament* for those and other similar purposes; and have given such a general outline of the preliminary proceedings for obtaining such acts; a part of the work which, I hope, will be found of material assistance to the country practitioner.

All these additions, as well as every other which I have ventured to make to the former Edition, I have been careful to distinguish by asterisks, in order to prevent the possibility of any errors or injudicious alterations of mine, being imputed to the former Editor.

With this short exposition of my endeavours and my motives, I submit the work to the indulgence of a candid and liberal Profession.

C. BARTON, JUN.

LINCOLN'S INN,
JANUARY 1, 1826.

ADVERTISEMENT.

THE professional engagements of my friend, MR. WILDE, being now fully equal to what my own were when he obligingly undertook the charge of compiling a Supplement to my PRECEDENTS IN CONVEYANCING, I have, with his approbation, committed the re-publication of them to the care of the PRESENT EDITOR; whether I have acted wisely in doing this, I leave (as it becomes me) to the judgment of a more impartial tribunal: I may perhaps, however, be permitted to say that I have done so without any apprehensions for the result.

C. BARTON.

LINCOLN'S INN,
1st JANUARY, 1826.

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INTRODUCTION.

*OF AGREEMENTS.

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Preliminary remarks.

PREVIOUSLY to giving the forms of agreements adapted to PARTICULAR PURPOSES, it will be proper to make a few remarks upon the requisites to agreements IN GENERAL, in order that, in observing upon an agreement framed for effectuating any specific object, our attention may not be withdrawn from the subject immediately before us, by the necessity of adverting to such circumstances as have relation to it in common only with all other written contracts.

Definition of an agreement.

§ 1. Agreements are reciprocal stipulations between two or more persons, either to do or abstain from some particular act, and are generally designed as heads or memoranda of what is intended to be afterwards carried into execution by some more formal document, as an agreement to convey an estate, upon a good title being adduced, and the like; but they are frequently also complete and conclusive in themselves, without requiring any further act to be done by the parties to perfect the contract between them. And of this latter description, are most of those which are inserted in the ensuing volumes.

In no case, however, are agreements to be considered as transferring any *property* of themselves, and without further ceremony, but only as giving a right to either party to call upon the other for

* An asterisk placed against any observations, precedents, parts of precedents or notes, in this Edition, denotes their having been introduced by the PRESENT EDITOR.

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a specific performance of his part of the contract; and, on failure, a right to compensation in damages.

§ 2. The requisites to the validity of agreements or contracts, (the terms being taken synonymously) between parties of whatever kind, and upon whatever subjects, are,

Requisites to an agreement.

Competency of mind.

1. That the parties be competent to contract, viz. that they be not under the disabilities of infancy, coverture (*a*), idiotism (*b*), or other incapacity of mind (*c*), nor any undue or coercive influence, or fraudulent deception (*d*); nor alien enemies at the time of entering into it (*e*).

Some consideration necessary to support an agreement,

§ 3. 2dly, If the agreement be by *Parol*, one, *i. e.* under the hand only, and not the seal of the party (*f*), it must have some consideration; *i. e.* some reasonable cause or motive to support it (*g*), for agreements entered into frivolously, voluntarily, or gratuitously, without cause, motive, or reasonable object, (or *nuda pacta*, as they are called by the Civilians,) are wholly disregarded by the Courts. But a consideration is not, in notion of law, confined to money paid, for matters of convenience, prospects of advantage, however indirect, or other motive influencing the mind

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(*a*) Perk. Sec. 12. Zouch *v.* Parsons, 3 Burr. 1801. Harris *v.* Lee, 1 P. Wms. 483.

(*b*) Beverley's Ca. 4 Co. 124.

(*c*) 3 P. Wms. 130. n. a. 1 Fonb. Eq. 68. iv. 18. Ves. 18.

(*d*) Philips *v.* D. Bucks, 1 Vern. 217. Ardglasse *v.* Muschamp, *ib.* 237.

Incapacities.

(*e*) See these general incapacities, with their exceptions, fully considered, 4 Elem. Conveyancing, 2d Edition, p. 2, *et seq.*, also *post*.

Parol.

(*f*) It will be proper to acquaint the reader (the Editor presuming his readers to be juvenile readers) with the legal meaning of a *parol* agreement, as the instances are numerous where it is by some of the best law writers used incorrectly; nay, as if it meant an oral, or word of mouth agreement, in contradistinction from an agreement in *writing*, whereas its legal acceptation is always to be taken as in contradistinction to an agreement, which, although in *writing*, is not under the *seal* of the parties.

(*g*) See Jones *v.* Ashburnham, 4 East, 455. Parker *v.* Baylis, 2 Bos. & Pul. 77.

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of man to action, and not stained by moral turpitude or legislative prohibition, will be deemed a sufficient consideration to support and induce the Courts to enforce an agreement (*h*), although by parol. And if the agreement be under seal, then, without there being any apparent consideration (*i*), or reason for its having been entered into, for if parties will deliberately bind themselves by a formal contract, they must abide by it, and are not to be let off on the plea that they had not a reasonable inducement for doing so.

unless it be under seal.

§ 4. 3dly, The subject of the agreement must be legal, viz. it must be such as is not forbidden by the laws of religion, of morality, or of the land, to be done or omitted (*k*). If, therefore, it have a tendency to diffuse immoral or vicious principles (*l*), or to the commission or support of some immoral or vicious act or conduct (*m*), or the omission of some duty (*n*); or if it be prejudicial to the interests of the community, or welfare of society, as restraining the freedom of trade (*o*), or of marriage (*p*), it will be void. And it is the same in respect of agreements, which operate as an injury to third persons, not parties to the contract; as agreements having for their object to impose upon or deceive creditors, or others in anywise interested in the subject of the con-

Lawful subject of contract.

(*h*) 1 Roll. Abr. 24. 26, 27. Williamson *v.* Clements, 1 Taunt. 523. 2 Stark. 230. Barber *v.* Fox, 2 Saund. 134., and cases there cited; and Longridge et al. *v.* Dorville et al. 5 Bar. and Ald. 117. Thornton *v.* Fairlie, 2 Moore, 397.

(*i*) See Irons *v.* Smallpiece, 2 Bar. & Ald. 551, also cases collected, 1 Fonb. Eq. 2d Ed. 347. n. (*f*).

(*k*) Morse *v.* Royal, 12 Ves. 371.

(*l*) Dubost *v.* Berresford, 2 Campb. 511.

(*m*) Girardi *v.* Richardson, 1 Campb. 348. 1 Bos. & Pul. 340. Bowry *v.* Bennett, 1 Campb. 348. Walker *v.* Perkins, 3 Burr. 1568, and see Armandale *v.* Harris, 2 P. Wms. 432.

(*n*) Nerot *v.* Wallace, 3 Durnf. & E. 17. Kaye *v.* Bolton, 6. *ib.* 134.

(*o*) 2 Marshall, 273.

(*p*) Co. Lit. 206. b. Harteley *v.* Rice, 10 East, 22. Gibson *v.* Dickie, 3 Maul. and Selw. 463.

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tract (*q*). And, above all, are void such contracts as are made relative to any thing prohibited by the statute law.

As the statute 5 & 6 Ed. 6. c. 16., and 49 Geo. 3. c. 126., prohibiting the sale of public offices of trust (*r*).

The statute 7 Geo. 2. c. 8., relative to stock-jobbing. 3 Hen. 8. c. 11., against practising as surgeon, &c. without licence (*s*).

9 Geo. 2. c. 37., against conveyances in mortmain (*t*).

12 Ann. c. 16., against the taking more than legal interest (*u*).

16 Car. 2. c. 7., 9 Ann. c. 4., and 42 Geo. 3. c. 119., against gaming (*v*).

56 Geo. 3. c. 58, inflicting a penalty for selling pernicious drugs (*w*).

For per Holt, Ch. J. (*x*), "every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, though the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implies a prohibition (*y*)."

(*q*) Cockshot *v.* Bennette, 2 Durnf. and E. 763. Bryant *v.* Christie, 1 Stark. 329. 2 *ib.* 416.

(*r*) See Layng *v.* Paine, Willes, 571. Palmer *v.* Bate, 2 Brod. & Bing. 673. Harrington *v.* Kloprogge, *ib.* 678.

(*s*) Gremaire *v.* Le Clerc Bois Valon. 2 Campb. 144. Cannan *v.* Bryce, 3 Barn. & Ald. 179. Exp. Daniels, 14 Ves. 192. Steers *v.* Lashley, 6 Durnf. and E. 61. Booth *v.* Hodgson, *ib.* 405.

(*t*) Doe *v.* Pitcher, 6 Taunt. 359.

(*u*) Chesterfield *v.* Janson, 2 Black. Rep. 864. 2 Ves. 125, 156. Carstairs *v.* Stein, 4 Maul. & Selw. 192.

(*v*) Simpson *v.* Bloss, 2 Marsh, 542. Clayton *v.* Dilly, 4 Taunt. 165. Edwards *v.* Dick, 4 Barn. and Ald. 212.

(*w*) Langton *v.* Hughes, 1 Maul. and Selw. 593, &c. &c.

(*x*) Bush *v.* Coles, Carth. 232, 252.

(*y*) Cannan *v.* Bryce, 3 Barn. and Ald. 179. 5 *ib.* 335. 1 Taunt. 136. Langton *v.* Hughes, 1 Maul. and Selw. 595.

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§ 4. The parties must, at the time, have full and reciprocal knowledge of their respective rights relative to the subject of the contract, or of the doubts which may subsist, concerning such right (*z*).

Knowledge of their rights.

§ 5. And lastly, there must be a physical possibility of performing the stipulations agreed upon (*a*).

Possibility of performance.

§ 6. With respect to the form of the agreement itself, it is to be observed, that

Form of agreement.

1st, It must, in most cases, be in writing, for, by the statute of 29 Car. 2. c. 3. s. 4., (usually called the Statute of Frauds) it is enacted, that no agreement tending to charge executors or administrators with damages out of their own estate, or to charge any person with the debt or default of another; or to charge any person on a consideration of marriage; or relative to the sale of any lands, tenements, or hereditaments, or any interest therein; or relative to any matter not to be performed within a year from the making, shall be valid, unless it be in writing, and signed by the party to be charged therewith, or some person by him lawfully authorized.

Must in most cases be in writing.

§ 7. And by § 17. of the same act, it is provided, that no contract for the sale of any goods, wares, or merchandize for the price of 10*l.*, or upwards, shall be good, unless the buyer accept and receive part of the goods sold, or give something in earnest, or unless some note or memorandum in writing of the bargain be signed as above.

As to agreements for sale of goods.

§ 8. An agreement when in writing, may be poll; *i. e.* plain, straight, or even at the top: or indented, *i. e.* cut at the top in a tooth-like or undulating form; and under the seal of the parties, or their signature only. Where agreements are under the seal of the parties (whether indented or not), they are called special contracts;

Difference between agreements indented and poll.

(*z*) Meale *v.* Webb, 1 Brow. Ch. Ca. 308. Cann *v.* Cann, 1 P. Wms. 726.

(*a*) Co. Lit. 206. a. n. (1).

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and where under the signature only of the parties, parol or simple contracts. The difference between agreements so made, is generally speaking, (for we cannot in the short essays here proposed, enter into very nice distinctions), (*b*) that where they are indented, their phraseology if at all ambiguous, is construed as if proceeding from both parties; but where poll, as proceeding from that party only from whom they appear more especially to move. This distinction is, however, less regarded at the present day than formerly, every instrument being now so construed as to give effect to the real meaning of the parties, where it can be discerned, in whatever form it may be expressed.

Difference between agreements under *seal* or by *parol.*

§ 9. And where the agreement is under the seals of the parties, it is construed with greater strictness, as well between the parties themselves, as against them with respect to third persons, because on account of the solemnity with which it was entered into, it is supposed to have been concluded upon after more mature deliberation; whilst agreements under the hands only of the parties are more liberally construed, on the presumption that they may have been entered into instanter, and without previous reflection; for which reason, likewise, agreements under hand only require, as we have before observed, a consideration or reasonable motive to support them, lest either party be led to enter into an agreement unadvisedly and without a sufficient cause; whereas where an agreement is under seal, it is binding without any consideration or motive appearing (*c*). An agreement under seal, moreover, binds the heir of the party if he be named (*d*), whilst agreements by parol bind his personal representatives only. And lastly, an action may be sustained upon a contarct under seal after the lapse of an indefinite

(*b*) These will be found in the Elements of Conveyancing, see vol. iv. p. 59. 2d Ed.

(*c*) *Ante* p. iii. 1 Fonb. Eq. 347. n. (*f*) 2d Ed.

(*d*) 2 Saund. 7. n. 4. *ib.* 136. Wilson *v.* Knubley, 7 East. 128. 3 Smith, 123, & c.

period (*e*); whilst actions upon contracts not under seal, must be brought within six years after the cause arose (*f*).

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§ 10. The practical inferences from the above distinctions are, 1. That agreements need not in any case be indented, although where intended to be under the seals of the parties, they frequently are, with a view of giving them a greater appearance of form and solemnity.

Practical results.

2. That where no consideration or reasonable motive, or no lawful or sufficient one for the parties entering into the contract is apparent; where it is of such a nature that the real as well as the personal representatives ought to be bound; or where the circumstances of the agreement are such that any failure in the performance by either party may not be known within six years from the time of default, it will be very proper that it should be under seal.

3. But that where the consideration or motive for entering into it is apparent, and at the same time legal and moral; where the personal representatives only are intended to be bound; and where no danger exists of any breach of contract being concealed for a period of six years from the time of its commission, the signature alone of the parties may be deemed sufficient.

Of the formal parts of an agreement.

§ 11. As to the formal parts or structure of an agreement in writing, that which is usually adopted is, first to name the parties with their respective additions and places of residence, in order that they may be had recourse to on the subject of the contract if necessary. Secondly, it is usual and proper, (although not essential) that the agreement should have a short recital leading to the subject matter of it; as recitals serve in legal as well as common construction to control, extend, or explain the meaning of any

Recitals.

(*e*) 1 Saund. Rep. 37. (*f*) 1 Saund. Rep. 37.

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general words or expressions which may have been inconsiderately used in the operative part of the agreement (*g*).

Consideration.

§ 12. The consideration for the contract, if necessary to be stated, should be next mentioned, or be apparent on the face of the agreement (*h*).

Covenants.

§ 13. Then follow the covenants and stipulations between the parties relative to the subject of the contract; in framing which care should be taken that they be so explicitly stated as to leave no room for future questions respecting their actual meaning; for which purpose, it is extremely proper that solicitors should caution their clients (however illiberally such a conduct may be considered) against entering into agreements of themselves, and without legal advice.

Precision in form.

For although it is true, that no orderly distribution of the parts of an agreement nor any technical form of words is absolutely required by the laws of this country (*i*) to give it effect; all that is essential being, that it be free from all ambiguity; yet, as the usual mode of naming the parties to and arranging the parts of an agreement, and the accustomed legal phraseology contribute not a little towards facilitating the construction of them by the Courts, its form is by no means to be wholly disregarded (*k*). It is indeed known to every professional man, that agreements entered into by the parties themselves, are frequently so worded as to convey no determinate or distinct ideas whatever, and often by the indis-

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(*g*) See Co. Lit. 291. b. Dafforn *v.* Goodman, 2 Vern. 362. Lampon *v.* Cork, 5 Barn. and Ald. 606. Payler *v.* Homersham, 4 Maul. and Selw. 423.

(*h*) See *ante*, p. ii. § 3, Saunders *v.* Wakefield, 4 Barn. and Ald. 595. Bateman *v.* Phillips, 15 East, 272. Phillips *v.* Bateman, 16. *ib.* 356. Exp. Gardom, 15 Ves. 286.

Specific form.

(*i*) Where a particular species of contract executed abroad requires a specific form, or other circumstance to render it valid according to the laws of this country, (and unless so executed, it will not in general be binding on parties here,) they will be noticed as often as occasion may require it.

(*k*) See cases in 1 Sel. Ni. Pri. 470. 1 Pow. Contr. 384, *et seq.*

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criminate and unintelligible use of legal phrases by the parties, (and even sometimes, I lament to observe, by an improper application of them even by their solicitors), they are rendered totally inexplicable; and hence (more particularly since the true legal interpretation of the words of agreements is not, in general cases, allowed to be controlled by the understanding of the parties (*l*)) the use of the following and other similar collections of forms by way of precedents for agreements, and other minor assurances between parties in matters relating to the more common concerns and transactions between man and man.

Execution and attestation.

§ 14. The last thing requisite to perfecting the ordinary form of an agreement, is the declaration of the parties, that in testimony of their assent to it, they have put their hands, or hands and seals to the contract in the presence of witnesses (*m*).

The usual form of expressing this will be found at the end of the first precedent inserted in the present collection; but it may be noticed here, that where it is signed by an attorney, or authorized agent of either of the parties, the attorney should write the name of his principal; and not his own name, as being done by him in pursuance of a power give him for that purpose (*n*).

Witnesses.

But with respect to the signing being in the presence of attesting witnesses, this is not essential, but merely to prevent the necessity of proving the hand-writing of the parties.

As to signing.

§ 15. As we have seen that by the Statute of Frauds (*o*), agreements are in most cases to be signed by the party to be charged with the performance, it may be proper to make some further remarks on this requisite to the validity of contracts.

(*l*) See Clifton *v.* Walmsby, 5 Durnf. and E. 64. Master of St. Cross *v.* Lord de Walden, 6. *ib.* 338. Anderson *v.* Pitcher, 2 Bos. and Pul. 164.

(*m*) See *ante*, § 6, 7, 9, 10, also Mod. Prec. Vol. 1. pp. 37, n. 31, 184, n. 28.

(*n*) See *post*, Prec. No. 1. p. 7, and 1 Mod. Prec. 37, n. (31).

(*o*) *Ante*, p. v. § 6.

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The word "signing" should seem to be sufficiently indicative of its own meaning to preclude any question; it has nevertheless been doubted, whether the sealing of the agreement is a sufficient signing, or testification of the parties' assent; as to which it has been determined, that this is not to be deemed a signing under the Statute, and that the name also of the party must be put.

The signature required by the statute, is only by the party to be charged; hence it is not essential to the validity of an agreement, as to the other party, that he sign it at all, his assent not being required (*p*), but as it must be uncertain which, if any of them will be the defaulter, both should sign (*q*).

It may also perhaps be right to notice, that the cross or other mark of a party unable to write his name, will be a sufficient signing (*r*).

So the signature may be by an authorized agent of the party, and if he prove to be so, although not authorized in writing, but orally only, it will bind his principal (*s*).

It may also further be mentioned, that (contrary perhaps to the common opinion) an agreement may be signed on a Sunday, or any other day set apart for religious duties; for although the performance of acts of a mere temporal, and more particularly when of a mercantile or other business-like nature, on those days is indecorous, and should if possible be avoided, yet it is not (unless in respect of exposing goods to sale) (*t*) forbidden by any rule of law, and will therefore be equally binding as if performed on any other day (*u*).

(*p*) Cooper *v.* Smith, 15 East, 103.

(*q*) Symmons *v.* Want, 2 Stark. 371.

(*r*) Phillimore *v.* Barry, 1 Campb. 513.

(*s*) Wilson *v.* Hart, 7 Taunt. 295. Cles *v.* Tricothick, 9 Ves. 250.

(*t*) 29 Car. 2. c. 7.

(*u*) See Cowper, 640. Rex *v.* Younger, 5 Durnf. & E. 449. Drury *v.* De Fontaine, 1 Taunt. 131

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§ 16. To go into the legal rules of constructing words or phrases, either necessarily or frequently occurring in agreements, would be wholly incompatible with the design of the present concise and familiar dissertations, but as a guide to the young solicitor, in framing, or perusing an agreement on behalf of his client, simply as such and without reference to any particular subject it may embrace, it may be proper to notice the few following points: namely,

Of the construction of agreements.

1. That it is not essential, (nor indeed in any respect of use) that the "executors and administrators" of a party should be named, in order to bind his personal representatives or assets, they being by intendment of law included in the person of the testator or intestate (*v*).

2. But that the word "heirs" must be used if the *real* assets of the party are intended to be bound (*w*).

3. That if a party to an agreement be a woman, and the terms used in it be referable to the male sex, it will not (although inaccurate) be fatal to the contract.

4. That if there be an alternative in an agreement for a thing to be done by another, without saying at whose election, it will be considered to be at the option of the party who is to do it (*x*).

5. And that where a penalty is imposed in case of default, the construction, in case of ambiguity, is to be most favourable for the party incurring it (*y*).

Penalty.

Alteration of agreements.

After a written agreement has been signed by the parties, it cannot be altered by either of them in any material point, without the consent of the other: a position so plain to common sense, that one would wonder how it could ever have given

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(*v*) See Hyde *v.* Skinner, 2 P. Wms. 270.

(*w*) *Ante*, p. vi. § 9, 10.

(*x*) Layton *v.* Pearce, Dougl. 15.

(*y*) Dy. 17. a. and see Mann *v.* Baker, 2 Stark. 255.

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rise to any judicial decision; notwithstanding which, however, many are the cases which have been determined in affirmance of it; and, in order to put a bar against attempts to alter agreements after they have been signed, which, if permitted, might open a door to fraud, and throw doubts upon the validity of mercantile contracts,—which, for the extension of commercial duties, should be kept free from all grounds of suspicion,—it is held, that if an agreement be once altered, it is invalidated in toto, and cannot afterwards be set up against the party, even though subsequently restored to its original form (*z*). Unless the alteration extend to the correcting a mere clerical mistake only, without in any respect altering the terms of the contract, or the intention of the parties (*a*). But even these, for the reasons already suggested, are discountenanced by the courts, as tending to stain the purity which should subsist in all mercantile transactions (*b*). If, therefore, an alteration is made by mutual consent, of however trivial a nature it may be, such consent should be testified, either by the parties putting their initials against each alteration, or by some other unequivocal evidence of their concurrence.

Of agreement for sale of goods, &c.

§ 17. The agreement being signed and sealed, or signed alone, as the case may require, it will, in general, be complete, so far as to vest in the parties their respective rights in the subject of the contract and the benefit of the stipulations contained in it.

Delivery or earnest necessary.

If, however, the contract be for the sale of any goods or commodities, there will still, in order to perfect the transaction, want a delivery, either actual or symbolical, of the thing sold (*c*). For if

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(*z*) See Master *v.* Miller, 4 Durnf. & E. 320. Chitty on Bills, 6th Edit. 103.

(*a*) Cole *v.* Parkin, 12 East, 471. Sanderson *v.* Symmons, 1 Brod. & B. 426.

(*b*) Singleton *v.* Butler, 2 Bos. & Pul. 283. Johnson *v.* D. of Marlborough, 2 Stark. 313.

(*c*) See *ante*, p. v. § 7.

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the operation of the contract were, by the mere signature, to transfer the property from one party to the other, secret and pretended sales might be had recourse to on the eve of an insolvency, to defraud creditors. Where, therefore, the goods or other property sold is of such a nature as to be capable of manual delivery, this is necessary to be made upon the completion of the contract. But if, from its not being at the time in the immediate possession of the party, or from its bulk or quantity, an actual delivery is impracticable, then a symbolical or a constructive delivery must be had, as the delivering a part of it for the whole, or some other thing having, either obviously or by the understanding or usage between traders, some connexion with the thing sold, as the key of a warehouse where the goods are deposited, or the like, instead of the thing, or part of the thing itself (*d*); we have moreover seen, that by the 17th section of the Statute of Frauds, no oral contract for the sale of goods, wares, or merchandize, for the price of 10*l.* or upwards, can be good, unless the buyer receive part of the goods sold, or something by way of earnest (*e*).

And per Ellenborough Ch. J., in Hanson v. Meyer (*f*), whenever any thing remains to be done on the part of the seller, as between him and the buyer, before the commodity purchased is to be delivered, a complete present right of property has not attached in the buyer.

These constructive deliveries differ, according to the nature and circumstances of the property which is the subject of the contract; and as it is necessary that they should be known to the practical solicitors employed in mercantile affairs, they will be noticed at the end of the respective Precedents to which they may have reference.

(*d*) See Twinger v. Samuda, 7 Taunt. 265.

(*e*) See *ante*, p. v. § 7.

(*f*) 6 East, 614.

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§ 18. Finally, although an agreement perfected as above is complete as between the parties, yet it cannot be produced in a court of justice by either of them against the other, to enforce the terms of the contract, or to recover damages for a breach, until a stamp be impressed upon it as evidence of the proper duty imposed by the legislature having been paid. Hence, since the imposition of those duties, stamping may be considered as a further essential to its efficacy.

Of stamps upon agreements.

I shall, therefore, give the substance of so much of the late stamp act (*g*), as relates to the present subject of "Agreements," with some observations upon its several provisions.

§ 19. By the first of these acts it is enacted, that there shall be raised throughout Great Britain (*h*), in respect of the several instruments, &c. mentioned in the schedule thereunto annexed, the sums specified in such schedule; and which schedule, and all the provisions and regulations therein contained, it is declared, shall be taken as part of the said act.

Former acts.

"That the provisions of former acts, relating to agreements, shall be applied to such agreements only as are by that act charged with a duty of *one pound*; and that agreements charged with a duty of 1*l.* 15*s.* shall be subject to the same provisions as *deeds* chargeable with the like duty.

Wrong stamp.

"That although an instrument be wrongly stamped, yet it shall be valid if the stamp be of an equal or greater value than the proper stamp, unless where the stamp is specifically appropriated to some other instrument, by *having its name upon the face thereof*."

Shedule of the act.

§ 20. The following is the Schedule referred to by the act, in regard to agreements:—

Agreements of 20*l.* value.

Every agreement, or any minute or memorandum of an agreement, made in England, under hand only, or made in Scotland without

(*g*) 55 Geo. 3. c. 184.

(*h*) Videlicet England, Wales, and Scotland, but not including Ireland.

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any clause of registration (*and not otherwise charged in this Schedule, nor expressly exempted from all stamp duty*), where the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or indorsed thereon, or annexed thereto (*i*).

	£.	s.	d.
Where the same shall not contain more than 1,080 words (being the amount of fifteen common law folios or sheets of seventy-two words each)	1	0	0
And where the same shall contain more than 1,080 words	1	15	0
And for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of . . .	1	5	0

Provided always, that where divers letters shall be offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped with a duty of 1*l.* 15*s.*, although the same shall, in the whole, contain twice the number of 1,080 words or upwards.

	£.	s.	d.
And every deed of any kind whatever, (i. e. *any instrument under seal*) not otherwise charged, nor expressly exempted	1	15	0
And where the same, together with a schedule, receipt, or other matter put or endorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words above the first 1,080, a further progressive duty of . .	1	15	0

§ 20. But there are the following *Exemptions from the preceding and all other stamp duties*; viz. any label, slip, or memoran-

(*i*) See construction, *post*, p. xvi. § 21, 22.

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dum, containing the heads of insurances to be made by the corporations of the Royal Exchange Assurance, and London Assurance; or by the corporations of the Royal Exchange Assurance of houses and goods from fire, and London Assurance of houses and goods from fire.

Insurance.

Lease under 5*l.* rent. Memorandum or agreement for granting a lease or tack, at rack rent, of any messuage, land, or tenement, under the yearly rent of five pounds (*i*).

Servants. Memorandum or agreement for the hire of any labourer, artificer, manufacturer, or menial servant (*k*).

Goods. Memorandum, letter, or agreement, made for or relating to the sale of any goods, wares, or merchandise (*l*).

Mariners. Memorandum or agreement made between the master and mariners of any ship or vessel, for wages, on any voyage coastwise from port to port in Great Britain (*m*).

Letters. Letters containing any agreement (not before exempted) in respect of any merchandise, or evidence of such an agreement, which shall pass by the post, between merchants or other persons carrying on trade or commerce in Great Britain, and residing and actually being, at the time of sending such letters, at the distance of fifty miles from each other (*n*).

Act Extends only to agreements signed in Great Britain.

§ 21. Upon the above act, so far as it affects the validity of the instrument, as the evidence of a contract, it is to be observed, that those instruments only are required to be stamped, which are signed or otherwise perfected in *this country*, for although the instrument be within the description of an agreement, yet if it be signed in another country, and be in all respects perfectly conform-

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(*i*) See *post*, § 23. (*k*) *Post*, § 24. (*l*) *Post*, § 25. (*m*) *Post*, § 26.

Other exemptions.

(*n*) *Post*, § 27. Other exemptions from the act, are contracts exempted by the 17 Geo. 3. c. 53., relative to buildings, &c., for the residence of parochial clergy; by 42 Geo. 3. c. 116, relative to the redemption of the land tax; also contracts relating to the land revenues of the crown, and to the transportation of convicts.

able to the laws of that country (*k*), no subsequent act is necessary to render it effectual here (*l*). And it will be the same where it was made in the open seas, belonging to no country (*m*); but if it be actually signed here, it must be duly stamped, although it be dated and drawn up abroad (*n*).

Extends to all memorandums operating as agreements.

§ 22. And, if made in this country, whatever be its form, or the nature of the property to which it relates (*o*), (unless to the *sale* of goods, wares, or merchandize, which are excepted in the schedule of the act) (*p*), and whether it be only in the shape of a minute or memorandum, or, by way of evidence only of a contract having been made (*q*), (the subject matter of the agreement being of the value of 20*l.* or upwards) (*r*), if it be intended to operate as an agreement between two or more persons, it will require to be impressed with the proper stamp before it will be admissible evidence in a court of judicature. If, however, it be not intended to have the effect of an agreement between two or more parties, but be only an acknowledgment proceeding from one *party only*, as the initials of I O U (customary amongst traders, as an admission of a sum owing) (*s*), a letter of promise (*t*), (except for payment of an indefinite sum which may be owing by way of

But not if proceeding from one party only.

(*k*) But not if it clearly appear to be otherwise. Alves *v.* Hodgson, 7 Durnf. & E. 241. Clegg *v.* Levy, 3 Campb. 166.

(*l*) Jordaine *v.* Latchbrooke, 7 Durnf. & E. 601. Snaith *v.* Mingay, 1 Maul. & Selw. 87. Cruchley *v.* Mann, 1 Marsh, 29. 5 Taunt. 529. s. c.

(*m*) Zimenes *v.* Jacques, 1 Esp. Rep. 311. Winbled *v.* Malmberg, *ib.* 454.

(*n*) Abraham *v.* Dubois, 4 Campb. 269. (*o*) Emmerson *v.* Heelis, 2 Taunt. 38.

(*p*) Skrine *v.* Elmore, 2 Campb. 407. and see *post*, § 25. p. xix.

(*q*) Ramsbottom *v.* Mortley, 2 Maul. & Sel. 434.

(*r*) Ames *v.* Hill, 2 Bos. & Pul. 150. Firbank *v.* Bell, 1 Bar. & Ald. 36. Emmerson *v.* Heelis, 2 Taunt. 38.

(*s*) Israel *v.* Israel, 1 Campb. 499. Ames *v.* Hill, 2 Bos. & Pull, 150.

(*t*) Orford *v.* Cole, 2 Stark. 351.

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balance) (*u*), or a warranty of the quality or quantity of goods (*v*), it will not be considered as within the act, and therefore need not be stamped.

Leases.

§ 23. The first exception in the schedule of the act, is in regard to leases under the yearly rent of 5*l.*; it has, however, been determined, that it does not extend to such leases if they be *beneficial* leases (*w*).

Does not extend to hire of labourers,

§ 24. There is, also, an exception as to agreements for the hire of any "labourer, artificer, manufacturer, or menial servant;" but this exception, it is proper to notice, is held not to extend to the taking of an apprentice (*x*); and therefore, that agreements relative to the hiring or assignment of an apprentice, will require to be stamped.

nor to the sale of merchandise.

§ 25. An exception to the cases requiring a stamp, is also made in respect of "a letter, memorandum, or agreement made for or relating to the *sale of goods, wares, or merchandise,*" but this, it has been determined, extends to such agreements only of which a *sale* is the actual and primary object, and not where it is only collateral to the subject of the contract (*y*); but when the sale of goods, or something relative to such sale is the primary object of the contract, it matters not how disguised or apparently ambiguous the transaction may be rendered by a complication of circumstances attending it; and, therefore, agreements to take a share in the purchase of goods already bought (*z*), or to be responsible for the payment of goods bought by another (*a*);

(*u*) Smith *v.* Nightingale, 2 Stark. 375., and see Smith *v.* Carter, 2 Barn. & Ald. 778.

(*v*) Skrine *v.* Elmore, 2 Campb. 407.

(*w*) Hunter *v.* Boulcot, 2 Esp. Rep. 595.

(*x*) Rex *v.* Ditchingham, 4 Durnf. & E. 769., same *v.* St. Paul's, 6 *ib.* 453.

(*y*) Leigh *v.* Banner, 1 Enp. Rep. 403. (*z*) Venning *v.* Leckie, 13 East, 7.

(*a*) Wafrington *v.* Furbor, 8 East. 242. Watkins *v.* Vince, 2 Stark. N. P. C. 369.

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to indemnify another against loss in the resale of goods (*a*); to cancel an agreement for the purchase of goods, and entering into a fresh one (*b*); and the warranty of goods, as to their quality or quantity (*c*)—come within the exception of the act; for all these *relate to the sale* of the property of which they are the subject; and hence the decision in Wilks *v.* Atkinson (*d*), where it was held, that an agreement for the purchase of a certain quantity of linseed oil, although not then made, and therefore not coming, as was said, under the denomination of goods, &c., until *in esse*, was nevertheless within the exception, seems to be unimpeachable, although repugnant to that of Buxton *v.* Bidall (*e*), (deciding that the exception did not extend to goods afterwards to be manufactured,) for surely such a contract has *relation* to the sale, if it be not an actual sale of the particular article specified. So also the case of Waddington *v.* Bristow (*f*), (a case decided under the presidency of one of the most sensible judges, in the author's opinion, who ever presided in either of our courts (*g*), notwithstanding the contempt in which he is known to have been holden by the late Lord Chancellor *Thurlow*), is accordant to that of Wilks *v.* Atkinson.

"Goods, wares, and merchandise."

The words of the exception in the act, it is observable, are "goods, wares, and merchandise," and to these it is to be strictly confined, and therefore an agreement for the sale of a standing

(*a*) Curry *v.* Edensor, 3 Durnf. & E. 524. (*b*) Whitworth *v.* Crocket, 2 Stark. 431.

(*c*) Skrine *v.* Elmore, 2 Campb. 407.

(*d*) 6 Taunt. 11. 1 Marsh, 412.

(*e*) 3 East. 503.

(*f*) 2 Bos. & Pul. 454.

(*g*) Lord Alvanley.—One is extremely glad to find the quality of good sense in a judge; but unhappily, although acknowledged to be the most useful monitor in the common affairs of life, it appears (with great deference I say it) to have been wholly discarded in some of the late judicial expositions of our laws; which are so enveloped in clouds of *technical* reasoning, as to endanger the student's imbibing a converse of the position of Sir William Blackstone, "that what is *not* reason is not law," some illustrations of which it will be the Editor's duty to notice in the following pages.

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crop, has been held not to be within the exception; for, although when severed from the land, it comes within the term of goods, it is until then considered to be part of the land itself (*h*); and yet, where there was a like agreement for the sale of a crop, with the difference only that it was to be reaped by the purchaser forthwith, it was held to be within the exception, and therefore not to require a stamp, "the land being in this case in the nature of a mere warehouse for the goods until delivery (*i*)."

§ 26. Upon the exception as to agreements between masters and mariners, no decision has yet, that I know of, occurred.

Letters between merchants.

§ 27. Another exception in the act, is of "Letters containing promises respecting contracts concerning mercantile transactions from merchants, being fifty miles apart." This exception was introduced, in order that the free intercourse of letters between merchants, on commercial subjects, at a distance from each other, although amounting in effect to binding contracts between them, should not be fettered by the necessity of getting them stamped (*k*).

Double stamp.

§ 28. It is further to be observed, in relation to the necessity of agreements being stamped, that if several distinct matters are agreed upon in the same instrument, between different parties not possessing a common interest in the whole of the subject-matter of the agreement, it must be impressed with as many stamps as there are parties to the agreement possessing such different interest (*l*); but if the agreement relate to one entire subject only, one

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(*h*) Waddington *v.* Bristow, 2 Bos. & Pul. 453.

(*i*) Perhaps a juvenile student may (and I will not say with what impropriety) consider this amongst the instances alluded to in a former note, see *ante*, p. xix. n. (*g*). And see Parker *v.* Stamland, 11 East, 362, also Warwick *v.* Bruce, 2 Maul. Selw. 205.

(*k*) Mackenzie *v.* Banks, 5 Durnf. & E. 176. Butts *v.* Swan, 2 Brod. and Bing. 78, but if it contain other matter, it must be stamped agreeably to its tenor, *ib.* and Smith *v.* Cartor, 2 Barn. and Ald. 778.

(*l*) Powell *v.* Edmunds, 12 East. 6. Copley *v.* Day, 13. *ib.* 241.

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stamp alone will be sufficient, whatever number of parties may have joined in the contract (*m*).

§ 29. It may again be here noticed in regard to stamping, as it has already been in regard to other requisites to an agreement, that if it be altered after it has been signed by the parties, (unless in some very immaterial point, and which does not vary the substance of the agreement itself (*n*),) it will be considered as a new and independent contract, and consequently, require to be impressed with a new stamp (*o*).

Altered agreements to be re-stamped.

§ 30. But although a stamp is necessary for the legal efficacy of an agreement, yet it will be received in evidence, if stamped at any time before it be produced in court; and when stamped, will be rendered efficacious from the time of its commencement (*p*); hence the stamping of such agreements is often neglected with a view of saving the duty, on the supposition that there will never be occasion to produce it in a court of judicature. This, however, is a dangerous practice, for should the agreement by any means be lost whilst it remains unstamped, no parol evidence will in general (*q*) be admitted of its contents or of its prior existence; and consequently, no remedy can be had against its infraction by either of the parties (*r*); whilst if it were duly stamped, parol evidence might be given of its original existence and of its contents; a consideration which (independently of the penalties and punishments im-

Stamp is retrospective.

Stamping agreements should not be deferred.

(*m*) Baker *v.* Jardine, 12 East, 235. Davis *v.* Williams, 13 East. 232.

(*n*) See *ante*, p. xi.

(*o*) See Hammond *v.* Foster, 5 Durnf. and E. 635. and Bathe *v.* Taylor, 15 East. 412.

(*p*) See Burton *v.* Kirkby, 7 Taunt. 1742. Marsh 480. s. c. But if the stamp be delayed beyond twenty-one days from the date, in case of agreements not under seal, and twelve calendar months when under seal, a sum is required by the act to be paid by way of penalty, before it can be stamped. See 23 Geo. III. c. 158, § 15.

(*q*) See exceptions to the rule, Long on Personal Property, 57 *et seq.*

(*r*) See Rippener *v.* Wright, 2 Barn. and Ald. 478. 2 Stark. 478.

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posed in many cases by the act for evading the duty) will lead every prudent solicitor to take care that if the agreement be not stamped previously to its being signed, it shall be so with all convenient expedition afterwards.

Denomination of stamp.

§ 31. With respect to the proper value and denomination of the stamp required to be impressed upon the different species of instruments of which forms are given in the ensuing volumes, these will be noticed at the end of each form. It may be proper, however, generally to remark here, that if the instrument be under the *hand* only of the parties, the proper denomination will be that of an AGREEMENT, but if it be under the *seal* of the parties, it will require a DEED stamp.

Conclusion.

Should the above sketch appear to the reader to be imperfect, as I fear it may, he will, I doubt not, be good enough to recollect that it was not designed as a complete treatise, nor even as a *perfect outline* of the law relative to agreements *generally*, and in the *abstract*, but of such only as relate more especially to the *form* and *subject matter* of a written contract with reference, and as a preliminary introduction, to the PRECEDENTS OF AGREEMENTS ON MISCELLANEOUS subjects, given in the ensuing volumes. If he desire to have a more enlarged view of the rules and doctrines of the law as applicable to the *construction* of contracts relative to the various species of property, or the rights and interests which may be the subject of executory agreements, he is referred to *Powell on Contracts; Fonblanc's Equity; Newland on Contracts; Long on Personal Property; Paley's Principal and Agent; Barton's Elements of Conveyancing*, vol. iv. chap. 1., also *post*, vol. ii. *title* BOND.

And for agreements relative to the subjects comprised in the SERIES of precedents given in the preceding volumes,—see for those relative to PURCHASES, vol. i. p. 1 et seq. LEASES, vol. iv. p. 1, MORTGAGES, vol. v. p. 1, ANNUITIES, vol. vi. p. 1, DEBTORS and CREDITORS, *ib.* p. 357, et seq. COPARTNERSHIP, vol. vii. p. 1 et seq. SETTLEMENTS, *ib.* p. 251.

MODERN PRECEDENTS

IN

CONVEYANCING.

CLASS IX.

MISCELLANIES.

No. I.

* *An* Agreement *to apply for an* Act of Parliament *to inclose common Fields and waste Lands* (1).

AGREEMENTS *Act of Parliament.*

ARTICLES of agreement indented made this day of , in the year of our Lord 18 . Between (*the*

(1) Many acts have from time to time been passed from the 20 Hen. II. to the 13th of the late king, and which are still in force, to facilitate the inclosure and improvement of common and waste lands to a particular extent or for particular purposes: but on account of the alteration which the inclosures of wastes and commonable lands must unavoidably make, as well in the rights of the proprietors, as the interests of the parishioners, and to which their assent, could it be unanimously obtained, would in the greater number of cases be binding upon themselves only, and not upon their successors in title, by reason of their having a partial interest only in the land, as being only tenants for life, &c. or of the disabilities of coverture, infancy, &c.; it is frequently necessary that a particular, or, as it is called, a private act, should be obtained for the purpose; which being a species of assurance placed on record in the highest court of judicature in the United Kingdom, "substantiates, preserves, and perpetuates" the rights of all parties interested in the subject matter of the act; and see 2 Black. Com. 344.

This transcendant power of parliament is now also frequently had recourse to for the accomplishment of various other objects of public and private

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Parties.

Lord of the Manor) of, &c. lord of the manor and soil, within the parish of , and county of , of the first part; (*the rector or impropriator*) of, &c., rector and owner in right of his church, [or impropriator] of the tithes accruing within the said parish, of the second part; and A. B. of, &c. &c., (*tenants of the said manor*), (being respectively freeholders and copyholders within the said parish), and the several other persons whose names are respectively hereunto subscribed (having severally a right of common and other rights or interests in the common fields and wastes within the same parish) of the third part.

Recitals.

WHEREAS great loss and inconvenience have been heretofore sustained by the parishioners and inhabitants of the said parish of , by reason of many of their lands lying intermixed with each other, and dispersed over the common fields within the said parish, whereby all or many of the said inhabitants, proprietors of land in the said parish, have commonable rights over the whole of the said fields, and which are thereby rendered incapable of being cultivated in the best mode of husbandry: And *whereas* there are divers waste lands within the said parish, whereupon the said parishioners have commonable rights: AND WHEREAS much of the said waste lands might be greatly improved and made more productive and beneficial to the said parishioners, if the same were enclosed and converted into tillage; but the same cannot be done without the authority of Parliament.

Witness agreement to apply to parliament.

NOW THEREFORE THESE PRESENTS WITNESS, that it hath been, and hereby is, mutually and reciprocally concluded and agreed upon, by and between the several persons parties to these presents, for themselves severally and

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utility; as the making of roads, canals, and perfecting other extensive projects, which cannot be carried into effect without encroaching upon the private property of individuals. The enabling infants, committees of lunatics, tenants for life, bodies corporate, trustees of charities, and others, to convey or assent to the conveyance, exchange, partition, or other disposition of property, which, although calculated to benefit all persons interested in the subject, cannot otherwise be accomplished. But as preliminary agreements between parties competent to bind themselves will be nearly the same in point of form, for whatever purposes the act is formed, I have not thought it necessary to insert more than one precedent of this species of agreement, more particularly as most of the variations which would be induced by a reference to the subject matter of the act, may be easily extracted from the precedents of *petitions* and *bills*, which are given in the subsequent part of this work, under the title of "*parliamentary forms*;" and where will be found the petition and bill founded on the above agreement.

For an agreement between owners of common and waste lands to divide and inclose them upon their own authority, see *post*, No. xxxii.

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respectively, [and for their several and respective heirs executors, administrators, (2) and assigns,] as follows, (that is to say) that an application shall be made to Parliament in the ensuing session, or as soon thereafter as may be, at the common expense of them the said (*lord*) and (*tenants*) in the proportions hereinafter mentioned, for liberty and authority to inclose, divide, and allot the aforesaid commons and waste lands to and amongst the several persons interested therein, in the proportions and in the manner hereinafter mentioned; and for that purpose to appoint certain persons, therein to be named, to act as commissioners for carrying the said act into execution. AND that the said commissioners shall or may, in the first place, set out and apart in such place or places as they shall think most convenient and proper, such parcel of the said commons and waste grounds, not exceeding in the whole acres, for the purpose of furnishing gravel, stone, and hard materials, for the making and repairing the several roads and highways now being, or hereafter to be, made in pursuance of the said act, within the said parish of , and for such other purposes as the said commissioners shall deem expedient. AND that the said commissioners shall and may mark out all such public and private roads and ways over or across the said common and waste lands, as they shall think necessary or proper. AND that thereafter one full th part (3) of the residue of the said commons and waste lands, shall be allotted by the said commissioners to the said (*lord*) for his share or proportion thereof, as the lord of the said manor, and soil of the said parish, over and above what the said commissioners shall deem it right to allot to him, in respect of his freehold lands within the same parish (4). AND that after such one th part of the said commons and wastes shall be so allotted, the said commissioners shall set out and allot unto the said (*rector*), [or impropriator] one th part (5) of the then residue of the said commons and waste lands, in lieu of

Commissioners to set out ground for gravel, &c.

And mark out roads.

Extra allotments to the lord in respect of his manorial rights.

And to the rector for his glebe.

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(2) It is usual to make parties covenant for their representatives, as well as themselves, but this is not necessary. See *ante*, Introduction, p. xi.

(3) A twentieth part is usually allotted to the lord.

(4) The lord is entitled to an allotment in respect of his demesnes, besides his allotment as lord of the manor, Arundell v. Falmouth, 2 Maul. and Selw. 440., for the lord is to be considered as one of the proprietors; and if the law were otherwise, the lord would never consent to an inclosure.

(5) The allotment to the rector or vicar is generally about a fifteenth part.

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and in recompense for his glebe lands belonging to him in the said parish as rector aforesaid, and of his rights of common in respect thereof. AND that from and after the several allotments shall be so made by the commissioners to the said (*lord*) and (*rector*) respectively, then and thereafter all and every the residue or remaining parts of the said common and waste lands, shall be allotted by the said commissioners to the said (*tenants*), parties hereto, and the several other freeholders, and copyholders, and others, within the said parish, in proportion to the value of their several and respective lands, and estates and interests therein (4), due regard being had as well to the quality and contiguity of situation of the lands, wherein such their estates and interests subsist, as to the quantity of the same respectively: and also in proportion to and in respect of their several and respective commonable rights and interests in and upon the same commons and waste lands. AND it is further agreed, that the said act shall provide that the said (*rector*) and his successors [or impropriator and his heirs] shall be entitled to and have the like tithes out of and upon the said common fields so to be inclosed, and the said allotments in right of common, as he is now entitled to out of and upon other the lands and hereditaments within the said parish. AND it is hereby further agreed, that for the better carrying the said intended act and the purposes thereof into execution, and for the more speedy cultivation and improvement of the said commons and waste lands, the said commissioners shall be invested with full and sufficient powers and authorities to examine and finally settle and determine all disputes and differences which may arise, as well between any or either of the parties so interested as aforesaid, relative to their respective commonable and other rights in, upon, or in respect of the said commons or waste lands, as also between lessors and landlords, and their respective tenants, lessees, or occupiers, relative to the fencing and improving the allotments to be made in pursuance of the said act; so nevertheless, that no such lessee or occupier be compellable or required to pay more than per cent. per annum, for the money which may be expended by his lessor or landlord in fencing or im-

Then to the parishioners in respect of their commonable rights.

Rector or impropriator to have tithes.

General powers of commissioners.

To determine disputes.

(6) After the allotments to the lord and the rector, the residue of the waste is divided amongst such of the tenants or proprietors as possess rights of common appendent or appurtinent to their messuages, &c., and if two rights of common in the wastes of two manors appertain to the same tenant, the proprietor will have a right to an allotment on the inclosure of each waste; Hollinshead *v.* Walton, 7 East. 485, and see Barwick *v.* Matthews, 1 Marsh. 50. 5 Taunt. 365.

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proving the same. AND it is further agreed, that the expense to be incurred in obtaining the said act, as also subsequent expenses occasioned in carrying the same into execution shall be sustained and paid by the said *(lord and tenants)* and other the several freeholders, and copyholders, and persons interested in the said commons and waste lands, in proportion to the value of the allotments which shall have been made to them respectively, to be ascertained by the said commissioners. AND it is further agreed, that all persons who shall be tenants for life only of the said inclosed commons or waste, or of lands, or hereditaments, allotted in respect thereof, shall, by the said act, be authorized and empowered, under the direction of the said commissioners, to convey their respective allotments by way of mortgage for any term or number of years, for raising so much money as may be requisite to defray their respective shares, and portions of the expenses which shall be incurred in the executing the said act; so nevertheless, that the money so to be raised do not exceed shillings per acre on their respective allotments, and that the same be payable and paid to the said commissioners, or as they shall direct, for the purposes of the said act. AND it is further agreed, that in the said act there shall be inserted all such usual and other proper clauses and provisions for carrying these presents and the said act into execution, according to the intent and meaning of the parties hereto (7); provided only, that nothing herein or in the said act to be contained, shall prejudice or be construed to prejudice the right of the said *(lord)* in or to the seignory, royalties, fisheries, customs, services, or other his manorial rights, within the said parish, save only as to his rights of common and of soil therein. And further that there shall be a clause in the said act saving to the lord of the said manor, all such manorial and other rights save as aforesaid(8). AND it is hereby further agreed, that the said act shall provide and declare that all allotments to be made in lieu or in respect of the said commons and waste lands shall be deemed to be of the same tenure (9) and subject to the same incidents, and that

Expenses of the act.

Tenants for life may mortgage.

All proper clauses to be inserted.

Allotments to be of former tenure, &c.

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(7) See the usual clauses in acts for enclosures, *post*, Rider A. p. 8.

(8) Great care is to be taken, in framing this saving clause, in order to reserve every thing in particular intended to be saved; see the form of an INCLOSURE ACT, *post*, "PARLIAMENTARY PROCEEDINGS;" and see Townley *v.* Gibson, 2 Durnf. and East. 701.

(9) Wastes which are inclosed, although of a copyhold manor, will by the inclosure become freehold, unless it be otherwise declared. See Revell *v.* Joddrell, 2 Durnf. and E. 415. Townley *v.* Gibson, *Ib.* 701. Doe dem. Lowes *v.* Davidson, 2 Maul. and Selw. 176.

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the several proprietors of the said allótments shall be seised of or entitled to the same in like manner in all respects, and to, upon, and for the like uses, trusts, and purposes, and for the like estates and interests, as they respectively were seised of, or entitled to, in the land or hereditaments, in lieu or in respect of which such allotments were made. AND it is further agreed, that all persons having a right of common in or upon the said commons and waste lands, or any part thereof, who shall have exclusively enjoyed the same peaceably and without lawful molestation, (although acquired by unlawful inclosure or encroachments thereupon) for upwards of twenty years now last past, and without having paid any fine, rent, or amerciament to the lord of the said manor for the time being, shall be deemed to be the sole owner thereof, in like manner as if the same had never been part of the said common or waste lands. AND also a clause directing notice of appeals against the awards of commissioners, to be given to the parties interested therein, as well as to the said commissioners (10). And moreover, that the act shall contain all such other powers, provisions, declarations, and enactments, as shall be necessary or proper for carrying those provisoes and the intention of the parties into full effect and execution, according to the true intent and meaning thereof, save only such as are contained in or rendered unnecessary by a certain act passed in the 41 Geo. III. c. 109., intitled *An Act for consolidating in one act certain provisions usually inserted in acts of inclosure, and for facilitating the mode of proving the several facts usually required on the passing of such acts* (11), *or other act in force for the time being*. AND it is hereby further agreed, that A. B. of &c. &c., shall be commissioners, and C. D. of &c. &c., if respectively then living, shall be surveyors under and be appointed by the said act. AND it is hereby agreed, that it shall by the said act be declared, that the commissioners under the said act shall execute two parts of their award or awards, one part whereof shall be lodged in the vestry room or church of the said parish, and the other in the Court of King's Bench at Westminster, [or with the clerk of the peace for the said county of ,] to be there preserved for the benefit of all

Old encroachments to be undisturbed.

Names of commissioners to be appointed.

Counterpart of awards.

(10) The general inclosure act, 41 Geo. III. c. 109, (see § 3) gives power of appeal on notice given to the commissioners alone, but it seems very proper that it should be given to the parties interested also; the omission should therefore be supplied in local acts; and see Rex. v. Just. Lanc., 1 Bar. and Al. 630.

(11) See an abstract of this act, *post* Rider (A), p. 8.

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parties and persons interested therein. AND it is hereby further agreed and declared by and between every of the said parties hereto respectively, that they [nor any or either of them, (each agreeing and declaring as to himself only) shall not nor will oppose nor cause to be opposed, the passing of the said bill through either of the houses of parliament, or the king's assent being given thereto, or otherwise endeavour to prevent or impede the passing the same in any wise howsoever, but] that they and each of them respectively, shall and will, in due and proper time, sign the requisite petition for the said act, and do every other previous and subsequent act and thing which may be necessary on their respective parts, to procure the same to be passed into a law with all practical and proper expedition, under the penalty of default thereof, by way of ascertained and liquidated damages, of £ (12), to be payable and paid to the commissioners hereby named, or in the said act to be named, and applied for the purposes of the said act, or otherwise as the said commissioners shall direct. AND also that each and every of the said parties shall and will bear, pay, and discharge their due and respective parts and proportions of the costs, charges, and expenses of these presents and of triplicates thereof, and of all costs, charges and expenses in any manner attending the soliciting, passing, and printing the said act, or otherwise relating thereto. AND it is hereby lastly agreed and declared, that of, &c. shall be and is hereby appointed the solicitor for the purpose of obtaining the said act and carrying the same through the two houses of parliament, according to the usages thereof respectively; but removeable nevertheless at pleasure. IN WITNESS WHEREOF, &c. the parties hereto have [interchangeably (13)] set their hands and seals (14) on the day of the date hereof.

Parties will further the bill.

And pay their portion of costs hereof.

Solicitor named.

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(12) An agreement not to oppose an act of parliament has been held to be void, as against the good of the community, see 2 Mad. 356, but *quære*, whether this holds as to private acts? liquidated damages seem, however, to be proper, rather than a penal sum.

(13) There should be as many parts of the agreement as there are parties possessing distinct interests, and each party should have a part of the agreement signed by the other of them; and the usual (and better) way of effecting this, is for all the parties to sign each part of the agreement, in which case the word "interchangeably" should be omitted.

(14) As to an agreement being under the hands and seals or the hands only of the parties, see *ante*, Introduction, p. vi. § 8, 9.

No. I. Rider A.

*Abstract of the General Inclosure Acts, 41 Geo. III. c. 109., and 1 & 2 Geo. IV. c. 23.

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General inclosure acts. 41 G. 3. c. 109.

On account of the number of applications made to the legislature for acts of inclosure, it was deemed expedient that certain clauses usually contained in such acts should be comprised in one law, and certain regulations adopted for facilitating the mode of proving the several facts usually required by parliament on the passing of such acts; for which purpose many provisions were made by 41 Geo. 3. c. 109. And as a knowledge of these cannot but be useful to the solicitor who may be concerned for parties intending to bring in a bill for inclosure, by making him previously acquainted with what will be requisite to insure success, I have thought it not amiss to insert, as an appendix to the preceding agreements, an abstract of that and a subsequent act relative to inclosure bills. By the first mentioned act it is enacted,

Oath of commissioners.

§ 1. That all commissioners under such act shall take an oath (or affirmation, if Quakers), to act "faithfully, impartially, and honestly, to the best of their skill and ability," in discharge of the duties imposed upon them.

Commissioner not to purchase.

§ 2. That no commissioner shall become a purchaser of any lands to be inclosed within the parish, until five years after the execution of the award of the commissioners.

Commissioners to give notice of bounds.

§ 3. That the commissioners shall deliver a description of the boundaries of the lands to one of the churchwardens or overseers of the poor of the parish, and the lord of the manor (1).

Plans, &c. to be made and kept by the commissioners.

§ 4. That a survey, &c. of the lands to be inclosed, shall be made and kept by the commissioners, which shall be verified by the persons making the same, and which may be inspected, and copies taken by the proprietors; and if parties are dissatisfied, they may appeal, on giving previous notice to the commissioners (2).

Boundaries.

(1) The determination of the commissioners as to boundaries is not retrospective, so as to preclude evidence being adduced of the boundary line before the inclosure, or to affect a precedent devise. Rex v. St. Mary's, 4 Barn. & Ald. 462.

Notice.

(2) The framers of the act appear to have overlooked the propriety of notice being given to the parties interested, which should therefore be inserted in local acts. And see Rex v. Just. Lanc. 1 Barn. & Ald. 630.

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§ 5. That commissioners may enter to make surveys, &c.; and maps, &c. made by the parties themselves, may be allowed by the commissioners, if approved.

Allowance of plans.

§ 6. That claimants of lands to be inclosed, deliver in particulars of their claims (3), distinguishing such as may relate to freeholds, copyholds, and leaseholds. No exceptions to claims to be made after meeting appointed for that purpose, without special cause.

Claims of parties.

Commissioners not to determine upon title.

§ 7. That commissioners shall not determine upon title to lands, but shall assign, &c. according to seisin or possession.

Public roads.

§ 8. That the commissioners shall lay out or vary public roads, (except turnpike roads, see § 11.) and carriage ways, as they shall think expedient, subject to appeal to the quarter sessions.

Fences.

§ 9. That the roads shall be properly fenced (4), and commissioners may appoint surveyors with adequate salaries.

Private ways.

§ 10. That the commissioners shall lay out new private roads, ways, &c.; and former roads to be inclosed and extinguished (5).

Herbage.

§ 11. That the herbage on such roads shall belong to the proprietors of adjoining lands (6); but no turnpike roads to be altered without the consent of the trustees.

Locality, &c.

§ 12. That the commissioners shall, in their allotments, have regard to locality, as to situation of houses, and convenience of neighbourhood, and to the quantity and quality of land.

Ring fences.

§ 13. That the commissioners may direct small allotments to be ring fenced, &c.

Allotment to be final.

§ 14. That the allotments to proprietors, &c. shall be a full compensation for all incidental rights, &c., which shall cease on notice being fixed upon the church door.

Exchange.

§ 15. That commissioners may exchange allotments, with consent of the parties interested.

Joint tenants, &c.

§ 16. That the commissioners may make allotments in severalty to joint tenants, &c.

Time of acceptation.

§ 17. That the parties to whom allotments have been made, shall accept them within a given time.

Life interest, &c

§ 18. Relates to the acceptance of allotments by guardians and tenants for life.

Form of claims.

(3) The form of a claim under this section will be found, *post*, verb. "CLAIM;" "the drawing of such claim requiring a very considerable portion of technical accuracy." 1 Evans Stat. 294. n. (1) 2d Edition.

Ditch.

(4) It has been doubted whether a ditch is to be considered as a sufficient fence under this clause, but at length held that it might be considered to be so in legal construction, if so found by a jury. See Ellis v. Arnison, 1 Barn. and Cress. 70. 2 Dowl. and Ryl. 161.

(5) On the construction of this section of the act, see White v. Reeves, 2 Moore, 23., and Simpson v. Scales, 2 Bos. and Pul. 496.

(6) The persons taking under this clause, do not take by way of grant, but of parliamentary declaration, designating the persons who are to take and enjoy the herbage. Johnson v. Hodgson, 8 East. 38.

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§ 19. That allotments may be enclosed, with assent of commissioners, before the award shall be made.

§ 20. That trees, &c. may be allotted to the land, on the value being paid to the former owner.

Inclosure before award.

Trees, &c.

§ 21, 22, 23. Contain directions as to money to be laid out in purchase of lands, &c. under settlement.

Settled premises.

Expenses of.

§ 24. That if parties do not inclose according to direction of the commissioners, the commissioners may do so, and receive the rents and proceeds, till repaid the expenses (7).

Fences.

§ 25. Dead fences to the allotments may be put up within seven years, to protect quicks, &c.

Ibid.

§ 26, 27, 28. Further enactments as to the preservation of fences, &c. (8).

Expenses of inclosing.

§ 29. That if proprietors do not pay their proportion of the expenses, the commissioners may levy the same by distress, or receipt of profits (9).

Tenants for life, &c.

§ 30. That tenants for life, or guardians, may charge expenses on allotments not exceeding 5l. per annum; and mortgages may be made by commissioners for reimbursement to parties in possession advancing same.

Expenses of charity lands.

§ 31. That the commissioners may deduct from allotment of charity or school lands a rateable proportion of the expenses.

Sale to pay expenses.

§ 32. That where a sale is to be made of part of the land for payment of the expenses, the commissioners shall set out and sell the same, and a deposit to be made by purchasers.

Witnesses.

§ 33, 34. That the commissioners may summon witnesses to procure evidence from a distance not exceeding eight miles.

Award.

§ 35. That the commissioners, after completing the allotments, shall make their award, which shall be executed at a meeting of proprietors, and proclaimed in the parish church on the following Sunday, and enrolled at Westminster, or with the clerk of the peace, where it may be inspected, and copies taken; and award and copies signed by the proper officer to be evidence (10).

Receipts and payments.

36, 37. That the commissioners shall keep an account of all monies received, and paid by them; and monies raised shall be disposed of by the commissioners as a major part in value of the proprietors shall direct.

Leases by rector.

§ 38. That the rector, &c. may lease allotments for twenty-one years, with consent of bishop, &c.

Penalties and savings.

§ 39, 40, 41, 42, 43. Regard the recovery of penalties; Saving of rights of the lords of manors (11); General saving; authority for justices to administer oath. False swearing to be perjury.

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(7) See *post*, n. (9).

(8) On these clauses, see *ante*, p. 9. n. (4). (5).

(9) All the commissioners must, it seems, concur in the assessment of expenses; if, therefore, one of them die, another must be appointed before the assessment can be made. See Doe dem. Nicholson v. Middleton, 3 Brod. and Bing. 214. 6 Moore, 532, S. C.

(10) The award of the commissioners under this act is final, but by the subsequent act of 1 & 2 G. 4. c. 43. § 3. (see *post*, p. 11) it may be appealed against.

(11) See also 1 & 2 G. 4. c. 23. s. 4. *post*, p. 11.

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§ 44. That the provisions of the act shall affect future private acts only in cases where no contrary provisions shall be made in such acts.

Act of Parliament.

And in addition to the above act, it is provided by statute, 1 & 2 Geo. 4. c. 21.

1 & 2 G. 4. c. 23.

§ 1. That landlords may distrain for rents upon allotments, before the commissioners shall have made their award (12).

§ 2. That proprietors of allotments may have actions for damages committed, although the commissioners' award be not executed.

§ 3. That the award of the commissioners may be appealed against (13).

Leases.

§ 4. That leases made by incumbents, under act 41 Geo. 3. c. 109., may be renewed on their expiring before the end of the term granted (14).

4 Geo. 4. c. 35. meeting of commissioners.

It is also by 4 Geo. 4. c. 35. further enacted, that where trustees or commissioners appointed to carry any act of parliament into execution, shall not be able to meet on the day appointed for their first meeting, by reason of such day being antecedent to the passing of such act, the meeting of any three of such trustees or commissioners, within 14 days after the passing thereof, shall be sufficient to satisfy the act.

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(12) Until the passing of this act, the freehold of the allotment did not pass until the commissioners had made their award. Farrer v. Billing, 2 Bar. and Ald. 171.

(13) Under the former act the award of the commissioners was held to be final and unimpeachable, except for fraud. See also *ante*, p. 10. n. (10).

(14) See *ante*, p. 10. § 38.

No. II.

**An Agreement that one Creditor, or next of Kin of an Intestate, shall take out Letters of* Administration, *in trust for their common Benefit* (1).

ARTICLES of agreement indented (1), bearing date the day of , in the year of our Lord ; and made
Parties. between A. B., at, &c. (creditors *or* next of kin *as the case may be*), of, &c. deceased, of the first part, the several other persons whose names are respectively hereunto subscribed, as creditors, [*or* next of kin] also of the said (*intestate*) of the second part, and , widow of the said (*intestate*), of the third part. WHEREAS the said (*intestate*) deceased, was at the time of his death indebted to us whose names are hereunto subscribed and who are hereinbefore named as of the first and second parts in the several sums mentioned in the first schedule hereunto annexed (2). AND whereas, the said (*widow*) is entitled to her [dower and] thirds at the common law, or some other proportion of or in the [real and] personal estate and effects of the said (*intestate*), or, *as the case may be.* AND whereas, disputes have arisen between the parties hereto, as to their rightful proportions of the estate and effects of the (*intestate*), which have hitherto prevented administra-

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General remark. *(1) When a person dies indebted and intestate, and his next of kin refuses to administer to his effects, from an apprehension that there will be no surplus after satisfaction of debts, a creditor frequently takes out letters of administration, for the purpose of satisfying his own debt: but as this will involve him in the general distribution of the assets of the intestate, it is generally advisable in cases like this, that some agreement should be entered into by the parties relative to the administration and distribution of the effects, adapted to the subsisting circumstances.

Next of kin. * (2) Or recite, if so, that the several parties are of kin to the intestate in the manner set forth opposite to their respective names in the said schedule.

tion being taken out thereunto: NOW THESE PRESENTS WITNESS, that for ending all further disputes and differences relative to the premises, it is hereby declared and agreed, by and between the several parties hereto as follows (that is to say), THAT the said A. B., as one of the creditors [*or* next of kin] aforesaid, of the said (*intestate*) deceased, shall and may take out letters of administration of and to all and every the goods and chattels, and debts, credits, and effects of the said (*intestate*) deceased, according to the rules of the ecclesiastical courts, without any impediment or hindrance by or from, any or either of the other of the said parties, (each agreeing and declaring as for and on the part of themselves only and respectively), and the said A. B. shall and may administer, order, apply, and dispose of the same in the manner hereinafter expressed. AND it is also agreed that as soon as may be after the said letters of administration shall have been granted to the said (*administrator*), he the said (*administrator*) shall and will cause all the goods, chattels, debts, and effects belonging to the said (*intestate*) at the time of his decease, to be appraised by a sworn appraiser, and a true inventory thereof to be made, according to the duty and custom of administrators in like cases. AND that she the said (*widow*), and all and every the parties hereto of the said part, shall and will disclose and make known unto the said (*administrator*), when thereunto required, all and singular the goods, chattels, debts, and effects belonging, or due and owing to the said (*intestate*), at the time of his decease, to the best of their respective knowledge, information, and belief, and in whose possession, and where the same respectively now are, without any concealment, fraud, or deception whatsoever. THAT after the goods and chattels of the said (*intestate*) shall be so appraised, and an inventory thereof made as aforesaid, he the said (*administrator*) shall and will make sale, and absolutely dispose of the same, or of such parts thereof as may consist of debts, money, or securities, by public auction, for the best price that can be obtained for the same, (save only the wearing apparel and trinkets of the said (*widow*), and two beds, &c. *as may be agreed*, which shall be delivered to the said (*widow*),) and collect in and obtain payment of such parts thereof, as may consist of debts or securities for money, with all convenient and practicable speed. AND shall, or lawfully may, in the first place, retain and deduct out of the monies which shall from time to time come to his hands, all reasonable costs and charges, (including suits at law, or obtaining the opinions of counsel for advice, or otherwise), as he shall reason-

AGREEMENTS

Administration.

WITNESS.

Agreement that one of the creditors shall administer.

Effects to be appraised.

Parties will disclose intestate's effects.

Goods, &c. to be sold.

How to be applied.

AGREEMENTS *Administration.*

ably expend or be put unto in obtaining the said letters of administration, or in executing the same, and also in paying the funeral expenses of the said (*intestate*), not exceeding the sum of £ .

To widow a recompense for dower.

AND, in the next place, pay or cause to be paid unto the said (*widow*), for satisfaction of her right or title to dower, or thirds at common law, in or out of the [freehold messuage in which the said (*intestate*) lived at the time of his decease, situated at, &c., *or* the personal estate and effects which the said husband was possessed of at the time of his decease as the case may be], the sum of £ .

Specialty Debts.

AND then and in the next place, do and shall pay and satisfy the several sums mentioned in the schedule here underwritten, marked A, unto the person or persons against whose names the same sums are respectively sett.

Divide residue equally.

AND then and thereafter do and shall pay and divide the residue and surplus of the said monies, unto and between all and every of the other parties hereto and other the persons named, share and share alike, in the schedule hereunder written marked B, the several sums set opposite to their respective names, according to a due course of administration under the statute for the distribution of the estate and effects of intestates, *as the case may require*], when and as often as he the said (*administrator*) shall have sufficient in his hands to pay the sum of shillings in the pound upon the same respectively, and the amount whereof it is hereby agreed, shall be in full satisfaction of their several and respective debts or claims upon the estate and effects of the said (*intestate*).

Parties will not bring actions.

AND it is hereby further agreed and declared, that no one or more of the parties hereto, (each agreeing and declaring in the manner aforesaid), shall or will commence or prosecute any action, suit, or other legal proceeding against the said (*administrator*) or the said (*widow*), or any other person or persons whomsoever, whereby he or they shall be molested or prejudiced, or these presents or any agreement, matter, or thing herein contained, shall or may be in anywise impeached, or hindered, or delayed in being carried into effect; and that they, and every of them respectively, shall and will forthwith, absolutely, and for ever, abate and discontinue, all and every suit, action, and proceeding which they, or any or either of them shall or may have commenced, or prosecuted in or concerning the premises.

Will discontinue subsisting actions.

Administrator covenants to administer.

AND the said (*administrator*) doth hereby agree to take upon himself the administration aforesaid, and doth covenant and declare to and with the other respective parties hereto, well and faithfully to dispose of, administer, pay, and divide the estate and effects which shall from time to time come to his hands by virtue thereof, in the manner

hereinbefore expressed or hereby intended concerning the same, so nevertheless that they, and every of them do and shall, upon receipt of his or their share or proportion, or supposed and presumptive share or proportion thereof, give a good and sufficient release and discharge for the same, and also a good and sufficient indemnity to him the said (*administrator*) against any future lawful demands by any other creditor, kindred, or other person or persons who may be discovered to be entitled thereto, or to any part thereof; each of them the said parties hereto, doth accordingly covenant and declare with and to him the said (*administrator*), that if any person or persons, not party to these presents, do at any time hereafter, as creditor, kindred, legatee, or otherwise, of the said (*intestate*) deceased, commence or prosecute any action or suit against the said (*administrator*) as administrator aforesaid, and shall lawfully recover their said debt or claims against him the said (*administrator*), then and in such case, they the said parties shall and will, out of their respective dividends, shares, or sums so by them received, allow and pay in equal proportions, according to the amount thereof, unto the said (*administrator*) so much money as, together with the like proportion of him the said (*administrator*), will satisfy and discharge the said debts or sums, with all costs of suit, and also shall and will indemnify him the said (*administrator*) in a like proportion against all loss, costs, charges, and expenses which he shall or may sustain or be put unto, (other than by his own wilful default), by reason or on account of any such action, suit, or proceeding, or by reason of his having administered to the estate and effects of the said (*intestate*), or of having applied the same under and by virtue of these presents. AND moreover, shall and will become defendants respectively, if requisite, in order to such indemnity, in any action or actions which shall or may be commenced against him the said (*administrator*), as such administrator aforesaid, &c. (*reference of differences to arbitration* (3).) IN WITNESS, &c.

Indemnity to administrator.

Arbitration.

Signed, &c.

SCHEDULES ABOVE REFERRED TO.

(3) See *post*, p. 27.

AGREEMENTS

Agent.

No. III.

An Agreement between a Principal in the Country and an Agent in London, for the Sale of Articles of Manufacture (1).

ARTICLES OF AGREEMENT, entered into this day of in the year of our Lord 18 . BETWEEN

AGENT. General remark.

* (1) The business of commerce could not be carried on (nor indeed could many of the ordinary concerns of life be at all times conducted) without the assistance of agents, or persons appointed to act for the parties beneficially interested in the subject matter of the transaction; hence the law legitimizes acts done by an agent, as if done by the principal,

Who may be an agent.

under the well-known maxim, *qui facit per alium facit per se.* And as agencies are offices of a *ministerial* nature only, the performance of them does not require any *legal,* but only a *personal* discretion or judgment, i. e. such as the principal in his own discretion thinks them competent to perform; therefore any person, without regard to the legal disabilities in other matters, as coverture, minority, or the like, may be appointed an agent to do whatever the principal himself has authority to do. Co. Lit. 52. a.

Kinds of agents.

Agents are either *general* or *special.* A general agent is one appointed to manage all the affairs of his principal, either in some particular place, or in some particular matter discretionally, according to his own judgment. A special agent is one appointed to perform some particular or specific thing, or to complete some particular transaction, in the mode, and according to the directions pointed out by his principal.

In the first case, the principal is bound by whatever his agent may do consistently with the general scope of his authority, and nature of the matter entrusted to him; because, if he trust his agent with powers to which those who treat with him cannot know the extent, he must abide the consequences: but in the latter case, the principal is bound to the extent only of the special authority delegated, and not by any excess of, or deviation from it; for here, as his authority is circumscribed, and is known to be so from the character in which he acts, as will appear by the instances adduced in a subsequent page, (see *post,* p. 29. n.) it behoves the persons with whom he contracts to see its extent, or to sustain the consequences of their neglect. Hence, caution should be used by solicitors in preparing the form of an appointment of every general agent; that his powers are not, by any sweeping words, extended to authorize

Caution in framing appointment of a general agent.

(*the principals*) of, &c. of the one part, and (*the agent*) (2) of, &c. of the other part. WHEREAS the

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Agent.

him to do any thing which may be prejudicial to the interests of the principal, in excess of the authority reposed in him; for which purpose it will be proper (where any such danger is apprehended) to insert a negative clause, prohibiting him from doing or acceding to such and such particular things, in the exercise of his powers; for although this may not annul the transaction as between the principal and third persons, (see Harrison v. Harrison, 3 Durnf. and E. 177.) yet it will make him responsible to his principal for a wilful breach of the trusts confided to him.

Caution in framing appointment of a special agent.

The same doctrine, on the other hand, suggests the propriety, in framing the appointment of a *special* agent, of guarding against the insufficiency of his powers to conclude and complete the contract or transaction to be effected, the authority of a special agent being strictly construed and confined to the particular and express powers delegated to him; but as even a *special* agent may do all such acts as flow from his particular powers, or from the nature of the transaction, it will be proper, in the appointment of a special agent, to insert a similar restrictive clause to that already mentioned, if it be thought fit to restrain him from doing any particular act, which is within the scope of his implied authority, but which it is not intended he should exercise.

No particular form essential.

In other respects, no particular form or wording of the instrument is necessary to constitute an agent, nor is it even essential that it should be in writing, unless in particular cases required by statute, (and which will be noticed hereafter). Co. Lit. 48. b. 94. b. Rex v. Biggs, 3 P. Wms. 423. But it would evidently be imprudent as well for the principal to give, as for the agent to accept, an authority otherwise than in writing, in order to prevent all doubts as to the limits and extent of the powers intended to be transferred, and all questions as to the exercise of those implied by law.

The appointments of factors and brokers will furnish practical illustrations of the distinction we have been noticing between general and special agency, and upon which some further remarks will be made on these, (see *post*, No. IV.)

Notice of agent's authority.

In addition to what has already been said, it may be observed, that in order to protect the principal against the liability to which he is legally subject by the misconduct of his agents, in the cases I have mentioned, the solicitor for the principal, in the appointment of an agent, whether general or special, should advise his client (where the thing is practicable) to give to the party contracting or negotiating with the agent, notice, before the completion of the contract or transaction, of the agent's acting as such, and not as a principal, and of the extent of his authority. See Maners v. Henderson, 1 East, 335, and 1 Peake's Rep. 177.

Principal bound by acts of agent.

*(2) Great circumspection should be had by a principal in the appointment of an agent, as the agent, by becoming the representative of his principal, will bind him in all transactions relative to the subject of the agency, unless when he grossly, palpably, and evidently is acting in excess of the usual authority of agents of a similar description. And if the

AGREEMENTS *Agent.*

said (*principals*) are agents and manufacturers of , at their works, at aforesaid, and in order to increase the sale of their said goods and commodities, being desirous of keeping a stock of the various articles of their manufacture, at , for the London markets, have agreed with the said (*agent*) to become their agent in disposing of the same, upon the terms and conditions hereafter mentioned. Now THESE PRESENTS WITNESS, that for the considerations hereinafter mentioned, He (4) the said (*agent*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, declare, and agree with, and to the said (*principals*) and each of them respectively, and their respective executors, administrators, and assigns, that he the said (*agent*) shall and will, during the term of years, to be computed from the day of the date of these presents, (but determinable nevertheless as hereinafter mentioned) accept and receive all such goods, wares, and merchandize, as shall be sent or consigned to him, by the said (*principals*), or any, or either of them (5), and carefully deposit the same in warehouses or

Recital of appointment of agent.

Covenant by agent to dispose of manufactures consigned to him.

Notice of agent exceeding his authority.

agent exceed his authority, immediate notice should be given of it to the party with whom he has contracted, as an acquiescence for any unnecessary length of time would be an assent to the transaction, and be an implied authority for similar dealings by the agent with the same or other parties. See Ward v. Evans, Ld. Raym. 930. Spittle v. Lavender, 2 Brod. & Bing. 452, and very trifling circumstances will afford a presumption of subsequent assent. See Fern v. Harrison, 4 Durnf. & E. 177. Hunter v. Prinsep, 10 East. 378.; and see also 2 Durnf. & E. 189. n. Hence the solicitor should advise great caution to be observed by the principal in his correspondence with his agent on the subject of any excess of authority which he does not intend to sanction; and in case of the agent ceasing to be such, immediate notice (and the most public in the case of a general agency) should be given of his removal to prevent the principal being further liable for his acts.

Agents copartners.

*(4) If there be several agents in copartnership, say,

"They the said (*agents,*) for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, but not the one for the other of them, or for the heirs, executors, or administrators, or for the acts, deeds, or defaults, of the other of them, do, and each of them doth hereby covenant, &c." *as above.*

Copartners.

(5) If copartners, say,

"Other person or persons who may be copartner or copartners with them or either of them, for the time being," *and so throughout.*

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Agent.

other proper places; AND ALSO shall and will use his best endeavours and means to sell, and dispose of the same, at such price or sum, or prices or sums, as he shall be required in writing, by and under the hands of the said (*principals*) or any or either of them, or for such further or other price or sum, or prices or sums, as can or ought to be had or obtained for the same, according to the rise or advance in the current or market price thereof; and at the expense and costs of him the said (*agent*) deliver the same to the several purchasers thereof;* and in all cases where he shall not receive any express directions relative thereto, will so act therein, as will to the best of his judgment be most beneficial to them the said (*principals*); AND also shall and will from time to time, on the first day of every month, send and transmit to the said (*principals*) and to the survivors and survivor of them, a full, clear, and correct statement in writing, of all orders, he shall have received and executed, and of all goods which may have come to his hands, and of all such thereof as he may have sold, and to whom, and whether for ready money or on credit, and likewise of all such other matters, transactions, and things as may in anywise concern the said agency business, and which may have taken place during the preceding month*; AND FURTHER, that he the said (*agent*), his clerks, agents, or servants, shall not nor will, without such consent in writing as aforesaid, at any time or times, within the said period or term of years, take or execute any order or direction for vending or disposing of, nor shall nor will vend or dispose of, or seek or endeavour to vend or dispose of any , or other merchandize of the nature or kind aforesaid, for or on account of himself the said (*agent*), his heirs, executors, administrators, or assigns, or for or on account of any person or persons whomsoever, other than and except them the said (*principals*), their executors, administrators, or assigns (6). PROVIDED ALWAYS NEVERTHELESS, that in case the said (*principals*), their respective executors, administrators, or assigns, shall not be able to supply or furnish, or shall not in fact supply or furnish the said (*agent*), his

At such price, &c. as principals shall direct.

And in default of directions to the best of his judgment.

Will not act as a like agent for other persons.

If principals fail to supply manufactures, agent may buy on their account.

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* The parts within asterics here and in the subsequent parts of this precedent, are insertions by the present Editor.

(6) It appears to be a lawful and binding stipulation, that an agent shall not employ himself in the affairs of another during the subsistence of the present appointment. See 1 Campb. 527.

Agent not to act for others.

AGREEMENTS *Agent.*

executors, administrators, or assigns, with such merchandize as aforesaid, upon receiving a request or notice in writing from and under the hand of the said (*agent*) within the time in such notice expressed, then and in every such case it shall be lawful for him the said (*agent*), his executors, administrators, or assigns, and he and they are lawfully allowed and required to provide and purchase elsewhere, and from any other person or persons whomsoever, such quantities of goods and merchandize, as he or they shall have demanded, or have occasion for in the mean time, and until the same can and shall be furnished or supplied by the said (*principals*), their respective executors, administrators, or assigns; he the said (*agent*), his executors, administrators, or assigns, at all times, and from time to time accounting with the said (*principals*), their executors, administrators, and assigns, for all and every the net profits to arise from the sale thereof, after deducting the first cost or price for the same, and the charges and expenses of carriage, and also the allowance or poundage hereinafter mentioned. AND they, the said (*principals*) for themselves, severally and respectively, and for their several and respective executors, administrators, and assigns, but not the one for the other of them, or the executors or administrators, or the acts, deeds, or defaults of the other of them, do, and each of them doth hereby covenant, declare, and agree, with and to the said (*agent*), his executors, administrators, and assigns, that they the said (*principals*), their executors, administrators, or assigns, or some or one of them, shall and will from time to time, during the subsistence of this agreement, unless prevented by some rule of law or equity, or other just and sufficient cause (7), consign, supply, and deliver, or cause to be consigned, supplied, and delivered, at their own costs and expense, unto the said (*agent*), his executors, administrators, or assigns, with as little delay as may be after notice in writing shall be given to them, under the hand of the said (*agent*), his executors, administrators, or assigns, so much and such quantities and sorts or kinds of goods and merchandizes, as he the said (*agent*) his executors, administrators, or assigns, shall require. AND shall and will allow

Covenant by principals to supply manufactures.

And allow per cent. commission.

Bankruptcy of principals.

(7) This agreement would be dissolved by bankruptcy, or any act rendering the performance of it illegal or impossible. Partridge v. Sowerby, 3 Bos. and Pul. 172; but if the obstacle be of a temporary nature, it will be a suspension only of the contract, which will revive upon its removal. Hadley v. Clarke et al. 8 Durnf. and E. 259.

and pay, or cause to be allowed and paid unto him the said (*agent*), his executors, administrators, and assigns, the sum of £ for every £100 worth of the said wares and manufactures as shall be by him vended, or disposed of, for or on account of the said (*principals*), their executors, administrators, or assigns, or any or either of them, and so in proportion for any less sum or amount than £100. by way of commission upon such sale and disposition (8). And also the annual sum of £ as a recompense for his time and trouble, in and about the matters and things aforesaid (8), so long as he shall continue the agent of them the said (*principals*) under the present agreement (9); and it is hereby agreed,

AGREEMENTS
Agent.

And salary of for trouble.

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(8) *Agents of every kind are entitled to a commission upon the sale or purchase of goods for their principal, although no agreement be entered into between them for that purpose. Hale. 467. But as the amount of the commission depends upon the nature of the thing, and custom of the trade, it is better, to prevent controversy, that the amount should be expressly agreed upon.

Agents entitled to commission.

An agent is also entitled to all necessary and reasonable expenses attending the transactions upon which he is employed; but as he will be the personal loser, should any of his advances be considered to be unnecessary, it will be proper, in regard to the security of both principal and agent, that the extent of his expences should be limited or extended by an express agreement between them, where the nature of the transaction will admit of it.—See the next variation.

And expenses.

There may be added, to this clause, if so agreed,

(*) "And that in case the commission, after the rate aforesaid, shall amount to a greater sum than the said salary or sum of £ , they the said (*principals*) shall and will, at the end and expiration of each half-year, pay to him the said (*agent*) or allow him to retain such further sum in addition thereto, as will make his said salary equal to what such commission (the same being reckoned upon monies actually received, and not upon outstanding debts) may amount unto; and also that they the said (*principals*) shall and will pay unto the said (*agent*) once every six months, all such sum or sums of money as he may have paid or laid out for or on account of books, paper, and stationery made use of in and about the said agency business, and also all such sums as he may have expended for the postage of letters upon the subjects of the said agency business, and for the carriage of goods sent or consigned to him the said (*agent*)."

Further allowance.

Expenses.

(9) It was determined in the case of Ball v. Coggs, 1 Brow. P. C. 296, where an agreement was made by principals with an agent to manage a concern during his life for a stipulated salary, that he was to be considered

Recompense to agent.

AGREEMENTS
Agent.

that the same, shall from time to time be a lien and charge upon the goods and manufactures of the said (*principals*) from time to time in the hands or care of the said (*agent*) (10). AND FURTHER, that they the said (*principals*), their executors, administrators, or assigns, or any or either of them, their or any or either of their clerks or servants, shall not, nor will within the said time or period of years, to be computed as aforesaid, without the consent in writing of the said (*agent*), his executors, administrators, or assigns first had for that purpose, take or execute any order for supplying or furnishing, nor shall nor will supply or furnish with work, or other the manufactures aforesaid, any person or persons whomsoever, who shall reside in the town of aforesaid, or within the space or distance of five miles therefrom, other than and except him the said (*agent*), his executors, administrators, and assigns. AND the said (*agent*) doth hereby for himself, his heirs, executors, and administrators, further covenant and agree, with and to the said (*principals*) and every of them, and their respective executors, administrators, and assigns, that he the said (*agent*) shall and will, at all times during the said term of years, be true and faithful unto the said (*principals*) and every of them, and their respective executors, administrators, and assigns, in and about the vending and disposing of the goods, merchandize, and things aforesaid, in all things, and act therein to the best of his ability, knowledge, and judgment; and also be true and faithful in and concerning all receipts, payments, accounts, matters, and things whatsoever, by him or them made, had, entered into, transacted, settled, or done, relative to the premises aforesaid, or any of them; AND shall and will, on the day of , in every year, account with and pay over unto them the said (*principals*), their respective executors, administrators, or assigns, all sums of money, bills, notes, and securities, which shall have been received by, or come to the hands of him the said (*agent*), his executors, administrators, or assigns, by all and every or any such sale or disposition of the said goods and merchandize, after deducting the

Principal not to appoint other agents.

Covenant by agent to be faithful to principals.

To pay over receipts once a year.

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as entitled to a continuance of the advantages, although he was afterwards discharged from the employ; which renders it prudent in an agreement of this kind, that the payment of the salary or other recompense should be expressly confined to the period of his services.

Goods in hand to be liable for debt.

(10) An agreement that a debt shall be a lien upon goods in the hands of a creditor is good; see Kirkmam, assig. of Walker, v. Shawcross, 6 Durnf. & E. 14.—and see now 6 Geo. 4. c. 94, *post*, p. 47.

commission and expenses aforesaid. (11). AND at the end or other sooner determination of the said term of years, deliver up all such goods and merchandizes as shall then remain unsold, or be in his or their custody, unto the said (*principals*), their executors, administrators, or assigns, or such person or persons as they or the survivor of them, his executors, administrators, or assigns, shall in writing under his or their hand, or respective hands, direct in that behalf. AND FURTHER, that he the said (*agent*), his executors, administrators, or assigns, shall not, nor will give credit for, or direct to be sold and delivered upon trust or credit, any of the goods, wares, and articles of merchandize aforesaid, exceeding the value of £ to any person or persons whomsoever, without the consent in writing of the said (*principals*) or some or one of them first obtained for that purpose, nor shall nor will sell, or contract to sell, or deliver, or cause, direct, or order to be sold or delivered upon trust or credit as aforesaid, any such goods, wares, commodities, and articles of merchandize whatsoever, however small the value or price thereof may be, to any person or persons whomsoever, whom they the said (*principals*) or any or either of them, shall have previously forbidden in writing to be credited or trusted; * and that when no such caution shall be given to him, shall and will be circumspect and cautious, and make due inquiries from persons of respectability, whether the persons applying to purchase on credit are persons of responsibility, and worthy to be trusted, and upon making every such inquiry, shall and will make a minute or memorandum thereof, in a book to be kept for that purpose, specifying the name of the person so applying to purchase on credit, and the name or names of the person or persons applied to for the purpose of ascertaining whether such person might be trusted with safety, and also specifying what was said upon the subject by such person or persons so applied to *. AND FURTHER, that he the said (*agent*), his executors, administrators, or assigns, shall not, nor will without the consent in writing of the said (*principals*), their executors, administrators, or assigns, or some or one of them,

AGREEMENTS

Agent.

And deliver up goods unsold at the end of the term.

Will not without consent give credit beyond a certain amount.

Will ascertain responsibility of debtors.

Nor compound debts, &c.

(11) If so agreed, add,

" And also that he the said (*agent*) shall and will from time to time, accept and duly pay all such bills of exchange as may be drawn upon him by the said (*principals*), to the amount of the balance he may have in hand, on having three days' previous notice given to him thereof."

Agent to accept bills.

AGREEMENTS
Agent.

under his or their hand, or respective hands, first obtained for that purpose, release, compound, or give acquittance for any sum of money, debt, security, or obligation, nor release, nor discontinue any action, suit, or other legal or equitable proceeding which shall have been instituted, or be at any time subsisting or depending, to compel the payment or observance of any debt, demand, or obligation, due or belonging to them the said (*principals*), or any or either of them, or their respective executors, administrators, or assigns, nor sign any bankrupt's certificate, letter of licence, or other instrument in writing, whereby any such sum of money, debt, security, or obligation, shall, or by possibility may be in any wise discharged, vacated, diminished in value, or otherwise prejudicially affected, until the same shall have been absolutely and bona fide paid and satisfied. AND FURTHER, that he the said (*agent*), his executors or administrators, shall not nor will at any time hereafter, without such consent in writing as aforesaid, assign, transfer, or in any manner make over this present contract or agreement to any person or persons whomsoever. AND the said (*agent*), doth hereby further covenant and agree, with and to the said (*principals*) and each of them, and their respective heirs, executors, and administrators, that he the said (*agent*), his executors, administrators, and assigns, shall at all times provide and keep all necessary, proper, and convenient ledgers and books, for the purpose of registering and keeping, and in which there shall from time to time be fairly and faithfully written, posted, and kept, just and true accounts and particulars of all wares and merchandizes which shall be by him sold and disposed of, and of all monies or securities for money which shall have been received by, or come to the hand or hands of him or them, for or on account thereof, and of the rates, sums, or prices at which the same were respectively sold and disposed of, and also of all credit given on account thereof, together with all other matters, transactions, and things necessary or proper in any wise concerning the premises; which said ledgers and books, and all bills, notes, and securities for money, letters, credits, and other writings relative to the matters aforesaid, shall, at all times during the said term, be and remain open and exposed to the free access and inspection of them the said (*principals*), their respective executors, administrators, and assigns, or any or either of them, who shall have free and unrestrained liberty and power, as well during the continuance of the said term of years, as at all reasonable times within the space of one month from the expiration thereof, to transcribe and copy out the same, or any parts

Nor assign over the agreement.

Will make entry of sales, &c.

Books to be open to the inspection of the principals.

AGREEMENTS

Agent.

thereof, at his or their free will and pleasure, either by themselves or himself, or his or their respective clerks or agents ;* and upon the final settlement and winding up of the said agency business, shall and will give and deliver up the same books, documents, and writings, undefaced and unobliterated, to the said (*principals*). AND it is hereby further agreed and declared by and between the parties hereto, that they shall and will during the continuance of the said agreement, on the day of , and the day of in every year, or within the space of next thereafter (13) (unless prevented by sickness or other unavoidable cause, and then as soon after the removal of such cause as may be), settle and account together respecting the receipts and payments, and other the matters and things relative to the said sale and disposition of the articles and things aforesaid; for which purpose a particular, true, and faithful statement or account in writing, shall previously to such day of and day of in every year, be prepared by the said (*agent*), his executors, administrators, and assigns, and clearly written in a proper book or ledger, of all receipts and payments, and other dealings and transactions which shall have occurred, or been had or entered into concerning the same, and in such manner and form, and to the intent, that the real state and condition thereof may in all things fully and clearly appear; and every such account and statement, when admitted, approved, and signed by the said parties respectively, and the balance due upon the foot thereof paid by the parties against whom the same may be, shall at all times thereafter be binding and conclusive upon them, and every of them, and shall not afterwards be opened or unravelled, unless some manifest error or mistake shall be discovered, or appear therein, within the space of twelve calendar months next thereafter; one fair copy of

Accounts to be settled every six months.

Settled accounts to be conclusive.

(13) *An agent is bound, unless it be otherwise stipulated, to account for, and pay over the net proceeds of goods sold by him, as soon as he has received it, or might have received it had he used due diligence. See Varden v. Parker, 2 East. Rep. 710. Hunter v. Welsh, I Stark, 224. Lucas v. Groning, ib. 392.—and see 5 Mod. Rep. 47., and if he act under a del credere commission, he is answerable for the produce immediately upon sale, without regard to his having received it or not. Bize v. Dickason, 1 Durnf. & E. 285. Hence, in cases where immediate payment might be inconvenient, and in general to prevent unreasonable importunity to the agent, it will be proper to specify the particular times of his accounting.

Agent bound to pay over receipts.

AGREEMENTS *Agent.*

which said account shall, if required, be delivered to, and retained by each of the said parties for his own proper use: and it is hereby agreed, that in the settlement of every such account, interest shall or may be charged by and allowed to the said (*agent*) upon all balances, and arrears of balances, (although in any such balance or balance may be included interest upon any former balance or balances) (15). PROVIDED ALWAYS, and it is further agreed by and between all the said parties hereto, that if any or either of them be minded or desirous to dissolve the contract or agreement hereby entered into at any time during the said term of years, herein before limited for the continuance thereof, and one of them shall give six calendar months' notice in writing under his hand unto the other of them of such his mind or desire, that then and upon such notice the said parties do hereby covenant and agree, that from and after the expiration of the said six calendar months this present contract and these presents shall cease and determine, any thing herein contained to the contrary thereof in any wise notwithstanding; and then and in such case the said accounts shall be settled and adjusted by and between the said parties to the day on which such notice shall expire, in the same manner as if the same term had expired by lapse of time (16). PROVIDED ALWAYS,

Interest.

Either party to dissolve the contract on notice.

Agent not to be answerable for involuntary losses.

Interest upon interest.

(15) *An exception to the rule that interest cannot be computed upon arrears of interest, is where an agent advances money for his principal in mercantile transactions, in which case he may, on making an annual rest, charge interest on the sums advanced, and add such interest to the principal, and compute interest upon it to the next rest. Bruce v. Hunter, 3 Campb. 467.

The above clause for vacating the agreement between the parties, may be as follows,

Dissolution of agency.

" * Provided always, and it is hereby also agreed, that if the said (*agent*) shall at any time before the expiration of years, be desirous of giving up the said agency business, it shall and may be lawful for him so to do, upon giving six calendar months' previous notice in writing of such his intention to the said (*principals*), or the survivors or survivor of them, or by leaving such notice at their or his usual place or places of abode. And it is also agreed, that if the said (*principal*) shall at any time before the expiration of the said term of years be minded and desirous to discharge the said (*factor*) from being such factor or agent as aforesaid, it shall be lawful for him so to do, upon giving six calendar months'

and it is hereby also agreed by the said (*principal*) that the said (*agent*), [his executors or administrators,] shall not be answerable for any loss or damage which may happen to any goods or merchandize which shall be sent or consigned to him, until or before the same shall come to his hands, or within his custody; nor for any loss or damage which may happen to any goods or merchandize which have actually come to his hands or custody, or committed to his care or charge, unless such loss or damage shall happen through his wilful default or neglect. AND, in furtherance of these premises, they the said (*principals*) have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint the said (*agent*) their true and lawful attorney for them in their names, and for their use, to sue for, recover, and receive all such sum and sums of money as shall or may be due or owing from any person or persons, for or on account of any goods or merchandizes sold by him as their agent or factor as aforesaid, and to give receipts and sufficient discharges for the same; (which said receipts and discharges shall exonerate all and every person and persons from being in any wise accountable for the application thereof;) AND do hereby also give unto him the said (*agent*) full power and authority to depute and appoint any other person or persons under him for any of the purposes aforesaid (16).] AND it is hereby lastly agreed and declared by and between the parties hereto, that in case any dispute or question shall arise between them with respect to the carrying these presents into effect, or otherwise in relation thereto, the same shall be referred to, and be decided by two indifferent persons (17), one to be named by the said (*principals*), [their executors, administrators, or assigns,]

AGREEMENTS
Agent.

Power of attorney, to receive debts.

Disputes to be referred to arbitration.

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previous notice in writing to the said (*agent*) of such intention, by leaving the same at the counting-house for the time being of the said (*factor*), or otherwise, any thing herein contained to the contrary notwithstanding."

(16) *If it be intended that the agent should have a power to appoint a sub-agent to act in his stead, should occasion require it, such power must be expressly given to him, as he will not otherwise have the power of doing so. 1 Roll. Ab. 330. Blore v. Sutton, 3 Mer. 237.

Sub-agent.

(17) Or, if so agreed,

"*To the determination and final decision of , of, &c., whose determination in writing under his hand shall be binding and conclusive on all parties hereto, and not be litigated or questioned by either of them, or their respective representatives."

Reference to a given person.

AGREEMENTS

Agent.

and the other by the said (*agent*), [his executors or administrators,] and in case of difference between them, then by any third person, to be by such two persons named (1); and the opinion of such two persons, or of such third person, or of any two of them, shall be binding and conclusive upon each of the said parties hereto and their respective heirs and administrators, and by them submitted to accordingly, without further controversy, and which said submission shall be by mutual bonds and such other reciprocal stipulations as are usual or proper in like cases. IN WITNESS, &c.

Arbitration.

(1) With respect to references of disputes to arbitration, see *post*, "Arbitration," also MOD. PREC. Vol. VII. p. 72, in notes.

No. IV.

* *An Agreement by a* Merchant *or* Manufacturer *with an* Agent, Factor, *or* Broker (1) *to take and dispose of goods abroad.*

ARTICLES of agreement indented, made, and entered into this day of , between the (*principal*) of, &c. of the one part,

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(1) A factor is a person to whom goods are consigned for the purpose of being *sold* ostensibly as for himself, but in fact as agent to the owner of them, and generally at a usual fixed commission of so much per cent.; in which case the principal relies solely on the discretion of the factor in selling to a responsible purchaser, to whom, and not to the factor, he looks for payment; but sometimes the factor sells under what, in the language of merchants, is termed a commission del credere, i. e. of giving credit at his own risk, when, in consideration of a per centage beyond the usual commission, he consents to make himself personally responsible for the payment of the goods sold; see 1 Durnf. & East. 112. Baring *v.* Cowie, 2 Barn. & Ald. 137. Factor, what.

A broker is an agent of a more general and indefinite kind than a factor, in as much as a broker is employed for the purpose of *buying* as well as selling goods for his employer, and the goods he is to make sale of are not consigned to him as they are to a factor, but are sold by sample or specification, as agent, and in the name of his principal. Broker, what.

This distinction gives rise to a difference in practice, for as a factor is in possession of the goods to be sold, the purchaser has a right to consider him as owner of them; whence it follows, that any misconduct of the factor towards the purchaser will fall upon the principal, for whom he acts as confidential trustee, and who must look to his factor for indemnity; and therefore in appointing a factor, not only care should be taken (as in other cases of a *generally authorized agent*) to employ a person of tried integrity and judgment, but the instrument of his appointment must guard against the consequences of his exceeding or misusing the trust reposed in him; see *ante*, p. 17. in notes,—see also, 6 Geo. 4. c. 94. *post*, p. 47. Cautions.

But in the case of the appointment of a broker, this will not be so necessary, for a broker not being in the possession of the goods he contracts to *sell*, cannot be considered by the purchaser in any other light than as an agent acting for his principal, and should therefore require the production of his authority, and if he do not, must abide by the consequences of the agent's exceeding his powers; when, however, such agent *purchases* goods for his principal, there is nothing to apprize the seller that he is not purchasing

AGREEMENTS
Agent.

and the (*agent* or *factor*) now at, &c., but about to proceed to beyond the seas, of the other part.

Whereas the said (*principal*) has shipped with the said (*agent*) on board the good ship or vessel called , whereof is master, now bound to aforesaid, divers goods, wares, and merchandizes, to the amount and value of £ sterling, or thereabouts, and hath intrusted the same to the care of the said (*agent*) as his agent or factor, to sell and dispose of the same at aforesaid, upon the terms and conditions hereafter mentioned. NOW THESE PRESENTS WITNESS that the said (*agent*) hath agreed, and hereby [for himself, his executors, and administrators,] doth covenant, promise, and agree, with and to the said (*principal*), [his executors, administrators, and assigns] as follows, that is to say, that he the said (*agent*) will take the said goods, wares, and merchandizes with him to aforesaid, and there sell and dispose of or use his best means and endeavours to sell and dispose of the same to the best advantage and for the most money that can be obtained for the same: AND from time to time will remit home to him the said (*principal*), [his executors, administrators, or assigns,] in good bills of exchange, or otherwise, all sums of money which shall arise from such sale and disposition, with a true and faithful account of the sales and prices of each and every of the same (1). AND the said (*principal*) doth hereby covenant, promise, and agree with and to the said (*agent*), that he the said (*principal*) will from time to time during the term of years, to be computed from the day of the date hereof, (if they the said principal and agent shall both so long live) but determinable nevertheless as hereinafter mentioned, on receiving from the said (*agent*) the remittances or produce arising from the sale of the said goods, wares, and merchandizes, ship and consign to him the said (*agent*) such further or other goods, wares, and merchandizes, as will keep up a stock in the hands and custody of the said (*agent*) of or to the amount or value of

WITNESS that agent will take charge and sell, &c.

and account for produce.

Principal will make future consignments.

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on his own account; hence, with reference to his *buying*, the appointment should contain an express agreement that he will in every such purchase produce his authority to the seller; in which case, should he not do so, he will be personally answerable; see Roe *v.* Davis, 7 East, 364. Baring *v.* Corrie, 2 Barn. & Ald. 137. 1 Moore, 157. 2 Stark. 443. But the most certain way for the principal to protect himself against the misconduct of his factor or agent, is (if he has notice of the contract before it is completed) to give express notice to the party of the agency; which, therefore, it behoves the solicitor for the principal to advise his client to do in every case where it is practicable; see 1 Peake's Rep. 177., also *post*, p. 32. n.**, and p. 47.

Accounting.

(1) See *ante*, p. 24. n. (13).

£ sterling. AND the said (*agent*) doth hereby in like manner as aforesaid, covenant, promise, and agree with and to the said (*principal*), his executors, administrators, and assigns, that he the said (*agent*), his executors or administrators, shall and will from time to time during the said term of years, determinable nevertheless as hereinafter mentioned, sell and dispose of the said goods, wares, and merchandizes, so to be hereafter shipped and consigned to him from time to time, to the best advantage and for the most money that can be procured for the same: AND shall and will immediately thereupon remit home to the said (*principal*), [his executors, administrators, or assigns,] in the manner aforesaid, all such sums of money as shall or may arise from the sale or disposition thereof, with a true and particular account of the sales and prices of the same respectively. AND also that he the said (*agent*) shall not nor will during the said term of years, purchase or receive for sale any goods, wares, or merchandizes whatsoever, in his own name, or on his own account, or in the name or on account of any other person or persons than of him the said (*principal*) (1). AND it is hereby agreed and declared by and between the parties hereto, that the said (*agent*) shall be entitled to and shall have and retain the sum of £ for every £100 (2), (and so in proportion for any less sum) which shall arise or be made by or from the sale or disposition of the goods, wares, and merchandizes so now or hereafter to be intrusted to the care of or shipped and consigned to him the said (*agent*), and also all necessary, customary, and reasonable expenses attending the same. AND the said (*agent*) doth hereby further, in the manner aforesaid, covenant, promise, and agree, that he the said (*agent*), [his executors, administrators, or assigns,] shall and will from time to time, and at all times during the said term of years, keep or cause to be kept all usual and proper books of account of and concerning all goods, wares, and merchandizes which he the said (*agent*), [his executors, administrators, or assigns,] shall from time to time receive from the said (*principal*), [his executors, administrators, or assigns,] and of all sums of money, bills of exchange, or other securities which he or they shall receive for or on account of the said goods, wares, and merchandizes. AND it is hereby further agreed and declared by and between the said parties hereto, that he the said (*principal*), [his executors, administrators, or assigns, or his or their lawful attorney or attorneys, or appointee or appointees,

AGREEMENTS

Agent.

Agent will sell such goods, &c.

And remit the produce.

Agent will not act for any other

Agent to have commission;

commission for trouble.

Agent will keep accounts.

Principal or his appointee may inspect books.

(1) See *ante*, p. 19. n. (6).
(2) See *ante*, p. 20. n. (11). and 21. n. (9).

Remittances.
Commission.

AGREEMENTS *Agent.*

lawfully authorized in that behalf,] shall or lawfully may from time to time and at all times during the said term of years, have at all seasonable times full and free liberty to inspect, view, and examine the books of accounts so to be kept by him the said (*agent*), [his executors or administrators] as aforesaid, and to take or cause to be taken any extracts from or copies of the same or any part thereof; and that he the said (*agent*), [his executors or administrators,] shall and will from time to time produce the said books of accounts unto the said (*principal*), [his executors, administrators, or assigns, and his or their lawful attorney or attorneys, or appointee or appointees,] for that purpose. IN WITNESS, &c.

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6 G. 4. c. 94.

*** Since the preceding note, (*ante*, p. 29, n. (1),) went to press and was composed, the act of 6 Geo. 4. c. 94. was passed, which declares that factors and agents having goods in their possession, shall, to a certain extent, be deemed the real owners. An abstract of this act will be found *post*, p. 47.

No V.

* *An Agreement between a* Tradesman *retiring from active business, and a confidential* Agent *for the management of it for his benefit, the Agent receiving a salary and also a part of the proceeds* (1).

Variations when there are sureties on the part of the Agent.

ARTICLES of agreement entered into and concluded upon this day of , in the year of our Lord 18 . Between *(the principal)* of, &c., of the one part, and *(the agent)* of, &c., of the other part (2).

Recitals.

Whereas the said (*principal*) being desirous of retiring from the active management of the said trade or business of , has agreed with the said *(agent)* to conduct and manage the same for the term of years, upon and for the terms and conditions hereinafter mentioned. NOW THESE PRESENTS WITNESS that for and in consideration of the covenants and agreements hereinafter contained on the part of the said *(agent)* to be performed, the said *(principal)* for himself, [his executors and administrators,] doth covenant, promise, and agree with and to the said *(agent)*, [his executors and administrators,] that he the said *(agent)*

Witness agent to manage and tradewith the present stock.

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(1) Although, generally speaking, the perception of any part of the profits or net proceeds of the business will constitute a co-partnership between the participating parties as to third persons, see Exp. Langdale, 18 Ves. 301. Cheap *v.* Cramond, 1 Barn. & Ald. 663, yet where the receipts of a portion of the profits is for the time and attention of the party devoted to the business, it has been held not to effect a co-partnership; nor will the receipt of an annuity or annual sum out of the business; see Exp. Stamper, 17 Ves. 404, 19 *ib.* 461; but as the distinctions upon this head are very nice, great care is requisite in preparing an agreement of this kind upon any plan of reciprocity of profit out of the trade.

Salary part of profits.

(2) If the agent procure a surety for his fidelity, make the principal of the first part, the agent of the second part, and the surety of the third part.

Surety.

AGREEMENTS *Agent.*

shall and will during the term of years, if they the said parties shall so long live, (unless the said term shall sooner cease under the proviso for that purpose hereinafter contained,) to be computed from the date of these presents, deal and trade with and sell and dispose of the stock in trade of him the said *(principal)*, now in, &c., and manage and improve the same in such manner as to him the said (*agent*) (under the direction of the said (*principal*) when given, and in default thereof then of his own discretion,) shall seem meet: AND that he the said (*agent*) shall and will by and out of the money which shall arise by such sale, disposition, or dealing with the said stock in trade, from time to time purchase and procure by ready money or on usual credit, such other goods or merchandize as shall be requisite to keep up and continue the said stock in trade of a like nature or description of goods, wares, and merchandizes, and of equal quantity and quality: AND by and out of the proceeds which shall from time to time arise from all and every or any of the said sales, dispositions, and trade and dealing, do and shall in the first place well and truly pay the yearly rent of the house, shop, and warehouses whereon or in which the said trade or business now is or for the time being shall or may be carried on, together with all parliamentary and parochial taxes, rates, and duties which now are or for the time being shall be payable for or in respect thereof, and such sums of money as may be requisite to perform the several covenants and agreements on the tenant's part to be performed in relation thereto; AND in the next place do and shall pay (1) to him the said (*principal*) or his assigns, yearly and every year during the said term, one clear annuity or yearly sum of £ by equal half yearly payments, on the day of , and the day of , in each year, without any deduction or abatement whatsoever; AND, subject thereto, do and shall or lawfully may retain the residue and surplus of the said profits, [or the sum of £10 per cent. upon the gross produce of the said stock and trade or business (2)], to and for his own sole use and

And purchase other goods.

Out of proceeds to pay rent, &c.

To pay principal annuity.

Residue for agent.

Salary.

(1) If the agent is to have a salary out of the proceeds, say,

"And in the next place do and shall retain unto and for himself the said (*agent*), out of and from the proceeds or receipts of the said trade or business, the clear annual sum of £ by equal quarterly payments on, &c., in every year, to and for his own use and benefit, by way of salary or recompense for his time, trouble, and attention in or to the same."

Profits.

(2) See *ante*, p. 33, n. (1).

benefit, as a recompense and satisfaction for his care and trouble in the sale and management of the said stock, and conducting the said trade or business (1). AND the said (*agent*) in consideration of the premises aforesaid, doth hereby [for himself, his executors and administrators,] covenant, promise, and agree with and to the said (*principal*), [his executors, administrators, and assigns,] that he the said (*agent*) will at all times during the said term of years, to be computed and determinable as aforesaid, diligently apply himself to the care and management of the said stock, trade, and business, according to the best of his skill, abilities, and judgment, and apply and dispose of the money which shall arise therefrom, in the manner hereinbefore expressed or declared concerning the same, and accor to the true intent and meaning of these presents; AND also shall and will from time to time during the said term, make true and correct entries in proper books of accounts to be kept for that purpose, of all goods, wares, and merchandizes, and stock in trade, which shall from time to time be purchased or sold, and of all monies which shall be paid and received for or on account of the same, and shall and will at all seasonable times in the daytime, permit the same to be inspected and copies of or extracts taken from the same or any part thereof, by the said (*principal*), [his executors or administrators,] or such other person or persons as he [or they] shall lawfully appoint for that purpose. AND further, that he the said (*agent*) shall not nor will at any time during the said term, directly and openly or indirectly and privately, buy or sell or in anywise trade or deal in the trade or business of, &c., or any of the goods, commodities, or articles now or heretofore customarily dealt in by the said (*principal*), in the name or on the account of himself the said (*agent*), nor otherwise than in the name of the said (*principal*), only, and for the ends and according to the true intent and meaning of these presents; nor shall nor will do any act or thing whatsoever, whereby the said present or any future stock in trade or any part thereof, shall or may be attached, extended, or taken in execution, or otherwise prejudicially affected. AND also, that at Christmas next, and also at every succeeding Christmas during the continuance of the said term, or oftener if thereto required by the

Agent will be faithful.

Will keep accounts.

Agent will not trade on his own account.

Agent will account once a year.

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(1) If the surplus is to be paid to the principal, say,

"And do and shall well and truly account for and pay over the residue or surplus of the net gains or profits, if any, by half yearly payments unto him the said (*principal*), his executors, administrators, or assigns, to and for his and their own use and benefit."

Surplus.

AGREEMENTS *Agent.*

said (*principal*), he the said (*agent*) shall and will state and make out a full account and statement in writing of the stock then being in the said trade, and also of the profits of the said trade during the preceding year, and deliver the same under the hand of him the said (*agent*) to the said (*principal*), in order that the exact and true state of the said business in all respects may appear.

Agent will, at the expiration of term, deliver up stock on hand.

AND that at the expiration or other sooner determination of the said term of years, he the said (*agent*), [his executors or administrators,] shall and will deliver up to him the said (*principal*), [his executors or administrators,] the stock then remaining on hand, and all books of account, securities, vouchers, and documents relative to the said trade or business for his or their own use and benefit; and which said stock in trade shall then be or be made up by the said (*agent*), of the value of £ losses by bad debts, delay of goods, and other inevitable casualties only excepted. (*Add proviso for vacating the agreement on notice by either party* (1), *and clause referring differences to arbitration, &c.* (2). IN WITNESS, &c.

Notice. (1) See *ante*, pp. 25, 26.

Arbitration. (2) See *ante*, p. 27.

Sureties. If there be sureties on the part of the agent, add,

"And the said (*sureties*) hereby jointly and severally agree to pay and satisfy to him the said (*principal*) any damage or loss he may sustain in consequence of any breach of this agreement on the part of him the said (*agent*), by giving credit for goods sold or delivered, so as the same shall not exceeed the sum of £ , which said sum of £ , or such part thereof as shall at any time appear to be deficient, it is hereby agreed shall be considered a debt due from each and every or either of them the said (*sureties*), and shall and may be recovered and recoverable in any court of law or equity in the same manner as any other debt or debts contracted by him or them are or may be recovered; and it is hereby further agreed by the said (*agent* and *sureties*), that in case the payments to be made to the said (*principal*) shall at any time be in arrear for the space of twenty-one days, he the said (*principal*) shall be at liberty to sell and dispose of all or any of the household goods, furniture, and other effects of him the said (*agent*), for and towards the payment and satisfaction of such arrears, in such and the same manner as if the same household goods, furniture, and other effects had been and were the actual property of him the said (*principal*). IN WITNESS, &c.

No. VI.

* *An Agreement by a Society of Tradesmen for appointing an* Agent *to* prevent abuses *and impositions by their* Country Dealers (1).

AGREEMENTS
Agent.

ARTICLES of agreement indented, made, concluded, and mutually agreed upon the of in the year of our Lord

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(1) The numerous frauds which were practised relative to the important articles of consumption in the metropolis, butter and cheese, occasioned the act of 36 Geo. 3. c. 86., placing them within the pale of various legislative provisions, and which relate also to the country agents or factors, who shall buy or sell them for others. But they are so frequently infringed upon, or fraudulently evaded with impunity, that it is common for some of the most respectable London dealers to unite in their individual endeavours to aid the benevolent designs of the state, by appointing factors of their own approval, under restrictive powers, similar to those contained in the precedent given above.

Butter and cheese.

In order to enable the student to adapt the above precedent to other trades, besides those to which it is made more particularly applicable, I shall here enumerate such existing enactments relative to the more common trades, &c. See also the act of 5 Geo. 4. c. 74, *post*, p. 42, as to standard weights and measures.

Other articles.

Bread, by 55 Geo. 3. c. 99. must, within the bills of mortality, weigh (avoirdupois) 16oz. the pound loaf; 17lbs. 6oz. the peck loaf; 8lbs. 11oz. the half-peck; 4lbs. 5½oz. the quarter; 2lbs. 2¾oz. the half-quarter. Bread made in other parts of the kingdom is under assize regulations of 31 Geo. 2. c. 29, which relate to the price and ingredients only; see also 1 & 2 Geo. 4. c. 50.

Beer, (i. e. Porter). Every barrel of beer must contain 36 gallons; kilderkin, 18 gals.; firkin, 9 gals. And ale, the barrel is to contain 32 gals.; kilderkin, 16 gals.; firkin, 8 gals.

Bricks are by 17 Geo. 3. c. 42. as to size, to be 8½ inches long, 2½ inches thick, and 4 inches wide. And pantiles, 13½ inches long, 9½ inches wide, and ¼ inch thick. Plain tiles, (by 17 Ed. 4. c. 4.) 10½ inches long, 6¼ inches broad, ¼ inch thick. Roof or Cres tiles, 13 inches long, ¼ inch and half-quarter thick. Gutter and cover tiles, 10½ inches long, and of convenient thickness and breadth.

Buttons are, in their manufacture, under the regulations of various statutes, but chiefly of the 36 Geo. 3. c. 60.

Candles, under that of 59 Geo. 3. c. 90., and some other acts.

AGREEMENTS

Agent.

18 . Between (*principals*) of, &c., and the several other persons whose names are hereunder subscribed, and seals affixed, (traders in in the city of , and places adjacent), of the one part, and (*agent*) of, &c. of the other part.

Recitals.

WHEREAS several abuses and frauds have been heretofore, and are continued to be committed in the weight or false package of [butter,] by several persons in the counties of and and elsewhere, in breach and contempt of a statute made in the 36th year of the reign of, &c., entitled, "An act," &c.; and although various penalties are provided by the said statute for preventing and punishing the said abuses, yet for want of due encouragement to put the same into execution, the same, or many of them still remain unreformed, to the great detriment of the dealers in the said trade, and the public at large:

WITNESS. To prevent abuses in the weight, &c. of butter, &c.

NOW THESE PRESENTS WITNESS, that to the end and intent the same abuses, so far as they do or may exist in the said counties of , may be reformed or checked, and that all offenders therein may be effectually prosecuted upon the said statute, or other statutes in force for the time being, they the said several persons whose names are hereunto subscribed, and seals affixed (being traders, or dealers in, &c.) do, and each and every of them severally and respectively, but not jointly or for each other, covenant, promise, and agree to and with the said (*agent*) by these presents, in the manner following (that is to say), that they the said

The cheesemongers, &c. authorise an agent

Coaches, 43 Geo. 3. c. 161.
Cordage, 25 Geo. 3. c. 56.
Cutlery, 59 Geo. 3. c. 7.
Firearms, 53 Geo. 3. c. 115., and 55 *ib.* c. 59.
Fireworks, 9 & 10 Wm. 3. c. 7.
Frameworks, 6 Geo. 3. c. 29.
Glass, 2 *ib.* 1. s. 28.
Gunpowder, 12 Geo. 3. c. 61.
Hats, 51 Geo. 3. c. 70.
Hides, Leather, } 39 & 40 Geo. 3. c. 66., and 48 Geo. 3. c. 71.
Linen, 4 Geo. 3. c. 37., 25 Geo. 3. c. 22., and various former acts.
Paper, 1 Geo. 4. c. 58.
Pamphlets, 60 Geo. 3. c. 9.
Plate, 12 Geo. 2. c. 26., 24 Geo. 3. c. 53., 59 *ib.* c. 32.
Silk, 13 & 14 Car. 2. c. 15., 13 Geo. 3. c. 68.
Soap, 59 Geo. 3. c. 90.
Woollen manufactures, 11 Geo. 2. c. 28., 17 Geo. 2. c. 5., 6 Geo. 3. c. 23., 49 Geo. 3. c. 109., 50 Geo. 3. c. 83.
Weights and Measures, 35 Geo. 3. c. 102., 37 *ib.* c. 143., 55 *ib.* c. 43., and see the late act of 5 Geo. 4. c. 74. for the regulation of weights and measures, *post*, p. 42. Rider A.

several persons subscribing and executing these presents, do hereby, as much as in them lies, fully and absolutely authorize and empower the said (*agent*) and his assigns, to buy and purchase in the said counties of , or elsewhere, as many pots for the putting in, and potting and packing of butter (1), (or, *as the case may be*) as he or thay shall think fit, and as shall be necessary or proper for that purpose, the same to be at the prices and sizes, and marked as follows, that is to say, the price not to exceed per dozen, for such pots or packages as shall be glazed, and not to exceed per dozen for such pots as shall be unglazed; and that every such pot or package shall be of such size as to hold at least , and that each of such pots or packages shall, besides the mark directed by the said statute, be marked and tarred with the letters (being the first letter of the christian and surname of the said (*agent*), and also with the weight of the said pot. AND that he the said (*agent*) shall and may deliver, or cause to be delivered to farmers and others who shall make, vend, trade, or deal in the said articles or commodities, the said pots or packages at the price, size, and so marked as aforesaid. AND they the said several persons executing these presents, do hereby appoint the said (*agent*) their sole agent for the purposes aforesaid, for and during the term of years, to commence from the day of , but determinable nevertheless as hereinafter mentioned. AND also they do hereby severally and respectively direct all and every of their respective factors and agents in the counties of or elsewhere, not to buy, receive, or take after the day of next ensuing the date of these presents, from any person whomsoever so making, vending, trading, or dealing in the commodities aforesaid, any other pots or packages on their or either of their account, but such only as shall be so sized and marked, and filled in the manner aforesaid; and for which purpose they the said factors and agents are hereby requested and directed to enter into proper articles with the said (*present agent*) that they will not

AGREEMENTS

Agent.

to buy butter in certain places.

Prices.

Sizes.

Marks.

Pots may be delivered to farmers, &c.

Agent appointed for years.

Factors not to take in any butter not so marked, &c.;

(1) This form, with some little alteration, was extracted from *Wood's Body of Conveyancing*, where the subject of the agreement related to the above articles; and considering it likely to be a useful guide for preparing the draft of an agreement for the prevention of imposition upon the London dealers in any other articles or commodities, it is here inserted. For although the author cannot recommend the present forms in Wood to be depended upon by a young practitioner, yet it contains very many of general utility in practice, and the Author has disdained no legitimate source which might assist him in preparing a copious collection of precedents for general use.

Wood's Conveyancing.

AGREEMENTS *Agent.*

receive or take any pots or packages of [butter] on their account, other than such as shall be so filled, sized, and marked as aforesaid: AND further, that they the said parties hereto, or any or either of them (each of them severally covenanting as aforesaid), shall not nor will receive any other pots or packages of from any other person or persons whomsoever in the counties aforesaid (except as aforesaid) than such only as shall be filled, sized, and marked as aforesaid. AND further, that they the said several parties to these presents, shall and will during the said term of years (determinable as aforesaid) allow and pay him the said (*agent*) or his assigns, in consideration of his trouble as their agent or factor in or concerning the matters and things aforesaid, (and also to the end that he may be enabled to prosecute all or any such person so offending as aforesaid, in case he shall so think fit,) the sum of for every such pot or package of which they shall respectively receive from the said counties of , the same to be paid to him or his assigns at , by the respective agents or factors of them the said several parties hereto, on the delivery of, or within days next after their receiving every such pot or package; and in case of any such agent or factor neglecting or refusing so to do, then the same to be paid to the said (*agent*) on demand, by such of the said parties whose factor or agent shall have been guilty of such refusal or neglect. AND the said (*agent*), in consideration of per pot of butter, so to be paid to him as aforesaid, doth hereby covenant and agree with and to the said several persons executing these presents, in the manner following (that is to say), that he the said (*agent*) or some person on his behalf, in case of sickness, shall and will use his constant and best endeavours to furnish all such farmers and other persons making or vending butter in the counties aforesaid with such pots as aforesaid, and also shall and will give an account unto the several persons executing these presents, or any or either of them, if and when thereunto required, of all such pots as he shall deliver out for the use of any person or persons who shall require the same; and also shall and will, to the utmost of his power, take care to have all such pots sized and marked as aforesaid, and that the same shall be of a just and true weight. And further, that he the said (*agent*) shall not nor will at any time during the term aforesaid, mark any other pot or pots than such only as shall be of such dimension and size as to hold the full quantity of 20lb. of butter, according to the direction of the said statute, and the true intent and meaning of these presents. AND

Nor will parties themselves.

Agent's salary, &c.

The agent will act as hereby directed.

Mutual penalties.

AGREEMENTS
Agent.

lastly, they the said parties executing these presents, for the true performance of the covenants and payments hereinbefore contained on their parts to be paid and performed, do hereby severally bind themselves unto the said (*agent*) in the penal sum of £ firmly by these presents; and he the said (*agent*), for the true performance of the covenants hereinbefore contained on his part to be done and performed, doth hereby bind himself unto the said persons executing hereof in the sum of £ firmly by these presents (1). IN WITNESS, &c.

(1) As to penal obligations, see *ante*, MOD. PREC. Vol. I. No. I. p. 15. n. (30), and *post*, pp. 62. n. (1). 65. n. (13). Penalty.

AGREEMENTS

Agent.

No. VI. Rider A.

* *Abstract of* 5 Geo. IV. c. 74. *for ascertaining and establishing Uniformity of Weights and Measures.*

See *ante*, p. 37. n. (1).

Standard measure of length.

§ 1. By this act it is declared, sec. 1. that the straight line or distance between the centres of the two points in the gold studs in the straight brass rod, now in the custody of the clerk of the House of Commons, whereon the words and figures "STANDARD YARD, 1760," are engraved, shall be the original and genuine standard of that measure of length or lineal extension called a yard; and the same straight line or distance between the centres of the said two points in the said gold studs in the said brass rod, the brass being at the temperature of sixty-two degrees by Fahrenheit's thermometer, shall be and is hereby denominated the "IMPERIAL STANDARD YARD," and shall be the unit or only standard measure of extension, wherefrom or whereby all other measures of extension whatsoever, whether the same be lineal, superficial, or solid, shall be derived, computed, and ascertained; and all measures of length shall be taken in parts or multiples, or certain proportions of the said standard yard; and one-third part of the said standard yard shall be a foot, and the twelfth part of such foot shall be an inch; and the pole or perch in length shall contain five such yards and a half, the furlong 220 such yards, and the mile 1760 such yards.

All superficial measure to be computed thereby.

§ 2. That all superficial measure shall be computed and ascertained by the said standard yard, or by certain parts, multiples, or proportions thereof; and a rood of land shall contain 1210 square yards, according to the said standard yard; and an acre of land shall contain 4840 such square yards, and being 160 square perches, poles, or rods.

§ 3. Provides for a restoration of the standard measure, if lost.

Standard pound weight.

§ 4. That the standard brass weight of *one pound troy weight*, made in the year 1758, now in the custody of the clerk of the House of Commons, shall be declared to be the original and genuine standard measure of weight, and such brass weight shall be denominated the IMPERIAL STANDARD TROY POUND, and shall be the unit or only standard measure of weight, from which all other weights shall be derived, computed, and ascertained; and one-twelfth part of the said troy pound shall be an ounce; and one-twentieth part of such ounce shall be a pennyweight; and one twenty-

fourth part of such pennyweight shall be a grain; so that 5760 such grains shall be a troy pound, and 7000 such grains shall be *a pound avoirdupois*, and one-sixteenth part of the said pound avoirdupois shall be an ounce avoirdupois, and one-sixteenth part of such ounce shall be a drachm. AGREEMENTS. *Agent.*

§ 5. Provides for the restoration of the standard weight, if lost.

§ 6. That the standard measure of capacity, as well for liquids as for dry goods not measured by heaped measure, shall be THE GALLON, containing ten pounds avoirdupois weight of distilled water weighed in air, at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches; and *a measure shall be forthwith made of brass, of such contents as aforesaid*, under the directions of the commissioners of his Majesty's treasury; and such brass measure shall be the imperial standard gallon, and shall be the unit and only standard measure of capacity, from which all other measures of capacity to be used, as well for wine, beer, ale, spirits, and all sorts of liquids, as for dry goods not measured by heap measure, shall be derived, computed, and ascertained; and all measures shall be taken in parts or multiples, or certain proportions of the said imperial standard gallon, and the quart shall be the fourth part of such standard gallon, and the pint shall be one-eighth of such standard gallon, and two such gallons shall be a peck, and eight such gallons shall be a bushel, and eight such bushels a quarter of corn or other dry goods not measured by heap measure. Standard measure of capacity.

§ 7. That the standard measure of capacity for *coals, culm, lime, fish, potatoes, or fruit, and all other goods and things commonly sold by heaped measure*, shall be the aforesaid bushel, containing eighty pounds avoirdupois of water as aforesaid, the same being made round with a plain and even bottom, and being nineteen inches and a half from outside to outside of such standard measure as aforesaid. And, Standard for heaped measures.

§ 8. That in making use of such bushel, all coals and other goods and things commonly sold by heaped measure, shall be duly heaped up in such bushel, in the form of a cone, such cone to be of the height of at least six inches, and the outside of the bushel to be the extremity of the base of such cone; and that three bushels shall be a sack, and that twelve such sacks shall be a chaldron.

§ 9. That any contracts, bargains, sales, and dealings, made or had for or with respect to any coals, culm, lime, fish, potatoes, or fruit, and all other goods and things commonly sold by heaped measure, sold, delivered, done or agreed for, or to be sold, delivered, done, or agreed for by weight or measure, shall and may be either according to the said standard of weight, or the said standard for heaped measure; but all contracts, bargains, sales, and dealings, made or had for any other goods, wares, or merchandize, or other thing done or agreed for, or to be sold, delivered, done or agreed for by weight or measure, shall be made and Things sold by weight or measure.

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had according to the said standard of weight, or to the said gallon, or the parts, multiples, or proportions thereof; and in using the same the measures shall not be heaped, but shall be stricken with a round stick or roller, straight and of the same diameter from end to end. But

§ 10. That nothing herein shall authorize the selling in Ireland, by measure, of any articles, matters, or things, which by any law in force in Ireland are required to be sold by weight only.

§ 11. 12. and 13. Provide for models being made and kept in the Exchequer of standard weights and measures, and copies thereof to be kept in county towns under the care of the magistrates.

Determination of disputes.

§ 14. That in all cases of dispute respecting the correctness of any measure of capacity, arising in a place were recourse cannot be conveniently had to any of the aforesaid verified copies or models, it shall be lawful for any justice of the peace or magistrate having jurisdiction in such place, to ascertain the contents of such measure of capacity, by direct reference to the weight of pure or rain water which such measure is capable of containing; ten pounds avoirdupois weight of such water, at the temperature of sixty-two degrees by Fahrenheit's thermometer, being the standard gallon ascertained by this act, the same being in bulk equal to 277 cubic inches, and 274 one-thousandth parts of a cubic inch, and so in proportion for all parts or multiples of a gallon.

Contracts for work or goods.

§ 15. That all contracts, bargains, sales and dealings, which shall be made or had within any part of the United Kingdom, for any work to be done, or for any goods, wares, merchandize, or other thing to be sold, delivered, done or agreed for by weight or measure, where no special agreement shall be made to the contrary, shall be deemed to be made and had according to the standard weights and measures, ascertained by this act; and in all cases where any special agreement shall be made, with reference to any weight or measure established by local custom, the ratio or proportion which every such local weight or measure shall bear to any of the said standard weights or measures, shall be expressed, declared, and specified in such agreement, or otherwise such agreement shall be null and void.

Present weights, &c. may be used if marked.

§ 16. That it shall be lawful for any person or persons to buy and sell goods and merchandize by any weights or measures established either by local custom, or founded on special agreement: provided that in order that the ratio or proportion which all such measures and weights shall bear to the standard weights and measures established by this act, shall be and become a matter of common notoriety, the ratio or proportion which all such customary measures and weights shall bear to the said standard weights and measures, shall be painted or marked upon all such customary weights and measures respectively.

As to rents payable in corn, &c. in England or Ireland.

§ 17. That at the general or quarter sessions of the peace to be holden in every county, riding, or division, and in every city, town, or place (being a county of itself) in England or Ireland, next after the expi-

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ration of six calendar months after the passing of this act, or at any general quarter sessions to be holden thereafter, an inquisition shall be taken before the justices, by the oaths of twelve freeholders having lands to the value of 100*l. per annum*, to be summoned by the sheriff or proper officer, to enquire into and ascertain the amount, according to the standard of weight or measure by this act established, of all contracts or rents payable in grain or malt, or any other commodity or thing, or with reference to the measure or weight of any such grain, malt, or other commodity or thing, and the amount of any toll or rate heretofore payable according to any weights and measures heretofore in use within such places; and such inquisitions, when taken, shall be transmitted by the clerks of the peace of the counties, or by the mayor, bailiff, or other head officer of every city, town or place (being a county of itself), into the Courts of Exchequer at Westminster and Dublin, and shall there be enrolled of record, and shall be given in evidence in any action or suit at law or in equity; and the amount so to be ascertained shall be the rule of payment in regard to all such contracts, rents, tolls, or rates, in all time coming; and the costs of such inquisitions, and the enrolments thereof, shall be paid in England out of the general rate or stock of every county or place, and in Ireland by presentments of the grand juries.

The like in Scotland.

§ 18. That the sheriff depute or sheriff substitute within Scotland, shall, as soon as conveniently may be after the expiration of six calendar months after the passing of this act, summon and impannel a jury of the same number, and with the same qualifications which are required in the jury who strike the fair prices of grain, to assemble at such place as he shall find convenient; which jury shall inquire into and ascertain the amount, according to the standards by this act established, of all such stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, payable in grain, malt, meal, or any other commodity or thing, according to the weights and measures heretofore in use within the same shires or stewartries; and such inquisitions, when taken, shall be transmitted by the sheriff clerks, or stewart clerks, in the Court of Exchequer at Edinburgh, and shall there be enrolled of record, and shall be given in evidence in any action or suit at law or in equity; and the amount so to be ascertained shall, when converted into the standard weights and measures, be the rule of payment in regard to all such stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, in all time coming; and the costs of such inquisitions, and the enrolment thereof, shall be assessed and levied, payed and defrayed, in manner herein-before directed in regard to the assessment for the models of weights and measures.

§ 19. and 20. Provide for tables of proportions and equalizations being published by the treasurer, &c.

Where former acts in force.

§ 21. and 22. That all the powers, rules, and regulations in force and

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contained in 29 G. 2. c. 25, *for appointing a sufficient number of constables for the service of the city and liberty of* Westminster, *and to compel proper persons to take upon them the office of jurymen, to prevent nuisances and other offences within the said city and liberty;* and in 31 G. 2. c. 17, for amending the said act; and in 35 G. 3. c. 102, *for the more effectual prevention of the use of defective weights, and of false and unequal balances;* and in act 37 Geo. 3. for amending the said act of the thirty-fifth year; and in an act of 55 G. 3. c. 43, *for the more effectual prevention of the use of false and deficient measures;* shall be applied and put in execution, except only so far as the said recited acts or any of them, or any part thereof, are expressly repealed or altered by this act, or any other act. And

Ireland.

§ 22. That all the powers, rules, and regulations in force, and contained in the several acts *passed in the parliament of Ireland*, for the ascertaining and examining, and for the seizing, breaking, and destroying of any weights or measures, shall be applied and put in execution, as if the weights or measures ascertained by this act had been specified in the said acts, except only so far as the said acts or any of them, or any part thereof, are repealed or altered by this act, or some other act.

What former acts repealed.

§ 23. Repeals all other former acts relative to weights and measures.

§ 24. Except that nothing in the act shall extend to repeal the act of 31 G. 2. c. 17, nor in any manner to affect or alter the power given by the said act to the dean, high steward, or his deputy, and the burgesses of the city of Westminster, to appoint a proper officer to size and seal all weights and measures used by persons dealing by weight and measure in the said city of Westminster and the liberties thereof.

No. VI. Rider B.

**Abstract of* 6 Geo. IV. c. 94. *for the better Protection of the Property of Persons entering into Contracts in relation to Goods, &c. intrusted to Factors or Agents.*
(*See ante, p.* 29. *n.* (1)).

§ 1. The first section of this act (after referring to the deficiency of the act of 4 Geo. 4. c. 83., "for the protection of the property of merchants and others, entering into contracts or agreements in relation to goods intrusted to factors or agents:") enacts, That persons intrusted, for the purpose of consignment or of sale, with any goods, wares, or merchandize, and who shall have shipped such goods, &c. in their names; and persons in whose names any goods, &c. shall be shipped by any other person, shall be deemed to be the true owners thereof, so far as to entitle the consignees to a lien thereon, in respect of any money or negotiable security advanced or given by such consignees to or for the use of the persons in whose names such goods, &c. shall be shipped, or in respect of any money or negotiable security received to the use of such consignees, in the like manner as if such persons were the true owners of such goods, &c.: provided such consignees shall not have notice by the bill of lading for the delivery of such goods, &c. or otherwise, at or before the time of any advance of such money or negotiable security, or of such receipt of money or negotiable security, that such persons so shipping in their own names, or the person in whose names any goods, &c. shall be shipped, are not the actual and *bonâ fide* owners thereof: Provided also, that the persons in whose names any such goods, &c. are so shipped, shall be taken, for the purposes of the act, to have been entrusted therewith for the purpose of consignment or of sale, unless the contrary shall be made to appear.

Factors or agents having goods, &c. in their possession, to be deemed the owners, with respect to contracts made on the faith of such property.

§ 2. That after 1 October 1826, any person entrusted with and in possession of any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, warrant or order for delivery of goods, shall be deemed to be the true owner of the goods, wares, and merchandize described in the said several documents, so far as to give validity to any contract or agreement thereafter to be entered into by such person, for the sale or disposition thereof, or for the deposit or pledge thereof, as a security for any money or negotiable instrument advanced or given upon the faith of any such document; provided such

Persons in possession of bills of lading, &c. to be deemed the owner.

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person with whom such contract or agreement be entered into shall not have notice, that the person so entrusted as aforesaid is not the actual and *bonâ fide* owner of such goods, &c.

No person to acquire a security upon goods in the hands of an agent for an antecedent debt, beyond the agent's interest in the goods.

§ 3. That in case any person shall accept and take any such goods, wares, or merchandize in deposit or pledge from any such person or persons so in possession and intrusted as aforesaid, without notice as aforesaid, as a security for any debt or demand due and owing from the person so entrusted and in possession as aforesaid, to the person so accepting or taking, before the time of such deposit or pledge, then such last mentioned person shall acquire no further right or interest in or to the said goods, &c., than the person so possessed and entrusted as aforesaid had therein at the time of such deposit or pledge.

Persons may contract with known agents in the ordinary course of business.

§ 4. That (after the 1st day of October 1826) it shall be lawful for any person to contract with any agent intrusted with goods, wares, or merchandise, or to whom the same may be consigned, for the purchase of any such goods, &c., and to receive the same of, and pay for the same to such agent; and such contract and payment shall be good against the owner of such goods, &c. although such purchaser shall have notice that the person entering into such contract is an agent: provided such contract and payment be made in the usual and ordinary course of business, and that such purchaser shall not, when such contract is entered into or payment made, have notice that such agent is not authorized to sell the said goods, &c., or to receive the said purchase money.

Persons may take goods, &c. in pledge from known agents; but in that case shall acquire no further interest than was possessed by such agents.

§ 5. That it shall be lawful for any person to accept and take any such goods, wares, or merchandize, or any such document as aforesaid, in deposit or pledge from any such factor or agent, notwithstanding such person shall have such notice as aforesaid, that the person or persons making such deposit or pledge is or are a factor or factors, or agent or agents; but in that case such person shall acquire no further right or interest in or to the said goods, &c., or any such document as aforesaid, than was possessed by the said factor or agent at the time of such deposit or pledge.

Right of the owner to follow his goods in the hands of agent, or his assignee, in case of bankruptcy, and to recover them from a third person, upon paying advances made upon them.

§ 6. That nothing in the said act shall be construed to prevent the true owner of such goods, &c., from demanding and recovering the same from his factor or agent, before the same shall have been so sold, deposited, or pledged, or from the assignees of such factor or agent, in the event of his bankruptcy; nor to prevent such owner from demanding or recovering of any person the price or sum agreed to be paid for the purchase of such goods, &c., subject to any right of set-off on the part of such person against such factor or agent; nor to prevent such owner from demanding or recovering of such person, goods, &c. so deposited or pledged, upon repayment of the money, or on restoration of the negotiable instrument or instruments advanced or given on the security thereof; nor to prevent the said owner from re-

covering of such person any balance or sum of money remaining in his hands, as the produce of the sale of such goods, &c., after deducting the amount of the money or negotiable instrument or instruments so advanced or given upon the security thereof: provided always, that in case of the bankruptcy of any such factor or agent, the owner of the goods, &c. so pledged and redeemed, shall be held to have discharged *pro tanto* the debt due by him to the estate of such bankrupt.

In case of bankruptcy of factor, the owner of goods pledged and redeemed shall be held to have discharged pro tanto the debt due to bankrupt.

§ 7. Agents fraudulently pledging the goods of their principals deemed guilty of a misdemeanor; and may be transported for fourteen years.

§ 8. The act not to extend to cases in which the agent has not made the goods a security for any sum beyond the extent of his own lien. Acceptances of bills by an agent not to create a lien so as to excuse the pledge, unless the bills are paid when due.

§ 9. The penalty of the act not to extend to partners not being privy to the offence.

§ 10. The act not to lessen any remedy at law or equity which the party aggrieved may be entitled to adopt.

No. VII.

**An Agreement to* assign *the Benefit of a Contract for a Purchase before the Master* (1).

ARTICLES of agreement [indented] made this day of ., in the year 18 . . BETWEEN (*the assignor*) of, &c. of the one part, and (*the assignee*) of, &c. of the other part. WHEREAS &c. (*recite shortly the proceedings leading to the sale, &c. and the report of the Master or Deputy Remembrancer of the assignor's being the highest bidder.*) WHEREAS N. B. (one of the Masters of the High Court of Chancery, *or* Deputy Remembrancer of his Majesty's Court of Exchequer at Westminster) by his report dated, &c. as by the said order and report and other the said proceedings on reference being thereunto respectively had will appear. And whereas the said (*assignor*) hath agreed with the said (*assignee*) to assign or make over the interest of him the said (*assignor*) in the said purchase [in consideration of the sum of £] (2)

Witness assignor assigns benefit of contract.

NOW THESE PRESENTS WITNESS that the said (*assignor*) for and in consideration of the sum of £ . to be to him paid by the said (*assignee*) at the time and in the manner hereinafter

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Purchase of contract.

(1) Of assignment of contracts, see post. "Assignments;" also *ante* Vol. III. pp. 512. 522. in notis. This agreement may perhaps with some justice be considered as belonging more properly to the class of PURCHASE DEEDS. See *ante*, Vol. III. No. CVIII. and n. (2) there, but where any subject for a precedent has occurred to the editor as being likely to present itself frequently in practice, he has inserted a form in the supplemental volumes, rather than the profession should lose altogether the benefit to be derived from it, although it might have been introduced in the previous SERIES.

Consideration.

(2) The consideration, if any, for the assignment to a third person of premises sold before a Master must be very small, as, if it be a considerable advance upon the sum originally bidden, the biddings will be opened for a further competition.

mentioned, and of the covenants hereinafter contained on the part of the said (*assignor*) to be performed, DOTH hereby (as much as in him lies) absolutely assign, transfer, set over and relinquish unto the said (*assignee*), his heirs and assigns [*or* executors, administrators, and assigns, *if the premises be leasehold*] to and for his and their own use and benefit, all and every the interest, property, benefit, advantage, claim and demand whatsoever, both at law and in equity, which he the said (*assignor*), or any person or persons in trust for him, now hath or have, or at any time hereafter shall or may have or be entitled under or by virtue of his said bidding or the said report, in or to the lands, hereditaments, and estate, late of, &c. (*as the case may be*) in the said particulars of sale, so exhibited as aforesaid is mentioned, and subject to the terms and conditions thereunder written in all things. And he the said (*assignor*), doth by these presents constitute and appoint the said (*assignee*), his heirs and assigns, [*or* executors, &c.] to stand in the room, place and stead, and use the name of him the said (*assignor*) (1) in all acts, matters and things whatsoever, whether in the said Court of , or before the said Master, or elsewhere, to be done or performed for completing the said purchase or otherwise in relation thereto, and for requiring and having a good and sufficient conveyance made of the same unto and to the use of him, the said (*assignee*) his heirs and assigns [*or* executors, &c.] or as he or they shall require, and that as fully, effectually, and absolutely, and in as beneficial a manner, to all intents and purposes whatsoever, as would have belonged to him the said (*assignor*) or his heirs, [*or* executors, &c.] if these presents had not been made, and as if the said (*assignee*) had been the best bidder and reported purchaser of and for the said premises, instead of him the said (*assignor*); And he (*the assignor*) his heirs, &c. shall and will at his and their own expense, at any time or times hereafter, make or concur in any application to the said court which may be requisite to constitute him, the said (*assignee*), the purchaser thereof, in lieu of him the said (*assignor*), and all such other acts and things,

Power of attorney.

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(1) A mere contract, or other chose in *action*, not being at law assignable, it is necessary that a power should be given to the assignee to use the name of the assignor in whatever may be necessary to complete it. See Delaney *v.* Stoddart, 1 Durn. & East. 26, and *ante* MOD. PREC. Vol. III. p. 327. n.

Power of attorney.

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Assign.

as may be necessary and expedient to give effect and confirmation to these presents according to the true intent and meaning of the same. AND THESE PRESENTS FURTHER WITNESS, that he the said (*assignee*) in consideration of the relinquishment, assignment, or transfer hereinbefore made, or intended to be made to him by the said (*assignor*) as aforesaid, DOTH for himself, his heirs, executors, and administrators, covenant, promise and agree with, and to the said (*assignor*) his heirs [*or* executors and administrators] and assigns by these presents in the manner following, (that is to say) that he, the said (*assignee*) his heirs [*or* executors and administrators] and assigns shall and will from henceforth stand in the place and stead of him, the said (*assignor*), in all things for completing the purchase of the said lands, hereditaments, and estate, late of him the said, &c. as aforesaid. And shall and will obey and perform all and every such orders, decrees, and directions, as shall or may from henceforth and from time to time be made or given by the said Court, touching or concerning the same. AND, also, that he the said (*assignee*) his heirs [*or* executors and administrators] and assigns shall and will pay and discharge all and all manner of costs, charges, and expenses whatsoever, which shall or may be incurred, and allowed by the said Master, for or in completing the said purchase. AND, upon having a good and proper conveyance or assurance made to him and them, shall and will pay, or cause to be paid, the said purchase money or sum of £ to such person or persons, or so and in such manner, as the said court shall in that behalf order or direct. AND further, that he, the said (*assignee*) his heirs, executors, or administrators shall also, and will thereupon and immediately thereafter, well and truly pay, or cause to be paid, unto the said (*assignor*) his executors, administrators, or assigns, the said sum of £ , hereby agreed to be paid for the purchase of his estate and interest in the said premises. AND lastly, that he the said (*assignee*), his heirs, executors, or administrators shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said (*assignor*), his heirs, executors, and administrators, and his and their real and personal estates and effects, from and against all orders, decrees, actions, suits, costs, charges, damages, and expenses whatsoever, which shall or may fall upon or be occasioned or sustained by him or them, or wherein he or they may be liable, by reason or on account of his the said (*assignor*) being reported the purchaser of the said estate and premises, or of the failure of him the said (*assignor*) his heirs [*or*

Further witness. Assignee covenants to stand in place of assignor.

Obey orders of Court.

Pay expences of completing first purchase.

Pay original purchase money,

and the present consideration money,

And indemnify the assignor.

executors or administrators], or of him the said (*assignee*), in completing the said purchase, or obeying the orders, decrees, or directions of the said court relating thereto, or otherwise by reason of these presents. IN WITNESS whereof, the said parties hereto have [interchangeably] put their hands and seals (1), this &c.

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(1) An agreement of the above kind should be under the seal of the *assignor* (but that of the assignee is not so material); and the assignor should have a counterpart under the *hand* at least of the assignee; hence the usual way is for both parties to sign and seal the agreement, and each to retain one in which the word [interchangeably] will be omitted. —See also *ante* case INTROD. p. vi. ix. *et seq.* Sealing, &c.

With respect to the proper stamp see *ante* INTROD. p. xiv. *et seq*; but if under *seal* it is to be considered as a *deed*, see *ibid.* Stamp.

No. VIII.

An Agreement between a Landholder and a Bailiff *for the Management of a Farm,* &c.

ARTICLES of agreement, [indented,] made the day of , in the year of our Lord 18 . BETWEEN (*the principal*), of, &c. of the one part, and (*the bailiff*), of, &c. of the other part. WHEREAS the said (*principal*) hath agreed with the said (*bailiff*) to be his bailiff, land-steward, or agent, for managing the farm and lands of the said (*principal*) at , in the county of , for or after the rate of the sum or salary of £ a year. Now

Witness. Bailiff will manage to the best of his skill.

THESE PRESENTS WITNESS, that for the considerations hereinafter named, he the said (*bailiff*) doth hereby covenant, promise and agree, with and to the said (*principal*), his heirs [*or* executors, administrators] and assigns, that he the said (*bailiff*) shall and will at all times and seasons from henceforth, and so long as he shall continue the bailiff, land-steward, or agent of the said (*principal*) by virtue of these presents, manage, cultivate, and improve, according to the best of his abilities, skill and knowledge, all and singular the farms and lands of the said (*principal*) situate in aforesaid, with all and singular the cattle, stock and utensils, hereafter and for the time being belonging to, or being upon the said farm and lands; he the said (*principal*) providing from time to time all such sums of money as may be necessary to be expended or disbursed in relation thereto. And also, that he the said (*bailiff*) shall and will, on the day of , the day of , the day of , and the day of , in every year, well and truly account to him the said (*principal*), his heirs, [executors, administrators,] and assigns for all sums

Principal will pay salary.

of money which he shall have received and paid during the preceding quarter of a year, for or on account of the said farm and lands, and the stock and growing produce thereof; and pay over the same, or the balance thereof (after retaining such expenses and allowances) unto him and them. AND in consideration of the covenant and agreement

hereinbefore contained on the part of the said (*bailiff*), he the said (*principal*) doth hereby covenant, promise and agree with and to the said (*bailiff*), his executors and administrators, that he the said (*principal*), his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said (*bailiff*), his executors, administrators, or assigns, by equal quarterly payments on the days or times hereinbefore mentioned, the said yearly sum or salary of £ , or after the rate of such yearly sum or salary, so long as he the said (*bailiff*) shall continue to be the bailiff, steward, or agent of or for him the said (*principal*), under or in pursuance of these presents, and that in default thereof, he the said (*bailiff*) shall or lawfully may retain the same out of such monies as may, from time to time, come to or be in the hands of him the said (*bailiff*). AND, &c. (*add agreement for either party to annul the agreement on giving six months' notice*). (1)

(1) See *ante*, pp. 25, 26.

No. IX.

**An Agreement between an Underwriter and a* Broker (1), *for the Insurance of Ships* (2), &c.

Parties.

Recitals.

WITNESS. Underwriter authorizes broker to act as his insurance agent.

Risk not to exceed £

ARTICLES of agreement indented, made this day of , in the year of our Lord 18 , BETWEEN (*the underwriter*) of, &c. gent. and underwriter of the one part, and (*the broker*) of, &c. gent. and insurance broker of the other part. WHEREAS the said (*underwriter*) has proposed and agreed to employ the said (*broker*) as his broker or agent, for effecting insurances on ships and cargoes under and subject to the terms and conditions hereinafter contained, and the said (*broker*) has agreed to become and act as the broker of the said (*underwriter*) for the purposes aforesaid, under and subject to the said terms and conditions. NOW WITNESS THESE PRESENTS, that he the said (*underwriter*) doth hereby agree with the said (*broker*), that he the said (*broker*) shall or may and is hereby authorized and empowered from henceforth and at all times hereafter, until such counter order or notice as hereinafter is mentioned be given, to act as the agent or broker of the said (*underwriter*) and as such, to use the name and engage the credit of the said (*underwriter*), as an insurer or underwriter of or for any sum or sums of money at his discretion, not exceeding £ at any one time, or in the whole, without the express direction and consent in writing of the said (*underwriter*) on any ship, vessel, or goods, or merchandize in any ship or vessel, or on both thereof, so as the responsibility of the said (*underwriter*) on any one risk, either in a ship or vessel, or goods or merchandize in a ship or vessel, or both jointly or separately shall not exceed the sum of £ at one and the same time without such direction and consent as aforesaid, and so as the name of the said (*underwriter*), as an insurer or underwriter, shall be used as to such ships or vessels, goods or merchandize only on which insurances shall be transacted, at the office or house of business of the said (*broker*), in the regular and ordinary way as an

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Broker.

(1) As to the nature, &c. of the office of broker, see *ante* No. IV. n. (1.)

Insurances.

(2) For the several statutes relative to ship insurances, see 2 Ev. Stat. "Insurance"; see also 5 Geo. 4. c. 114.

AGREEMENTS.

Broker.

insurance broker, and on such risks only as are insurable in the common and ordinary course; but not in any case (without such direction or consent as aforesaid) exceeding a premium of £ per centum on the sum insured. AND that for the purpose of making any such insurances it shall be lawful, and he the said (*broker*) is hereby authorized in the name and as the attorney of the said (*underwriter*), to sign, seal, and deliver any policy or policies of insurances as the act and deed of the said (*underwriter*), and in his name, or otherwise for him, to receive and give acquittances and discharges, for every premium or premiums which shall be payable for or in respect of the said insurances, every or any of them. AND the said (*underwriter*) doth hereby covenant and agree to pay and allow to the said (*broker*) a salary of, or after the rate of, £ per annum, so long as he shall be employed as the broker of him the said (*underwriter*), by virtue of these presents (1). AND the said (*broker*) doth hereby covenant and agree with the said (*underwriter*), that he the said (*broker*) shall not, and will not, at any time insure in the name or engage the credit of the said (*underwriter*), in any other manner or to any greater amount than is hereinbefore mentioned; and that he the said (*broker*) shall and will from time to time, when ever thereunto requested by the said (*underwriter*), make up and render to him the said (*underwriter*), such full and particular account of all risks and sums in which the said (*broker*) shall have engaged the said (*underwriter*) as an insurer or underwriter, as he the said (*underwriter*), shall require, and as may be necessary to enable the said (*underwriter*) to ascertain the true state of his affairs in relation thereto. AND, also, shall and will at the end of every calendar month furnish the said (*underwriter*) with a true and exact account of all money which shall have been received by him, the said (*broker*), or have been paid for the said (*underwriter*), on account of premiums of or for any such insurances as aforesaid, and also of all losses which shall have been sustained or be claimed under, or in respect of, any such insurances. AND it is hereby, also, agreed, that the said (*broker*) shall on the day

Broker to sign policies, &c.

Broker to have a salary.

Broker will not engage the credit of the underwriter otherwise than as aforesaid.

Broker to deliver accounts of insurances.

And of surplus and payments.

Accounts to be settled yearly.

(1) If the broker be employed in buying and selling for his principal, add, "together with commission after the rate of £ upon all sales and purchases which shall be by him made for or on the behalf of the said principal." A broker is, like other agents, entitled to a customary commission upon his sales and purchases—and it has been determined that he may claim 5 per cent. on freight or chartering a ship to the Baltic. See 4 Campb. 96, and see 3 Chit. Com. L. 193. 221. 281, 4. *ib.* 282.

Commission.

AGREEMENTS.
Broker.

of in every year, or as soon as may be thereafter, make out and render to and for the said (*underwriter*) a true account of all profits and loss arisen or sustained by or on account of such insurances as aforesaid in the preceding year; and in which account of profits shall be reckoned and comprised all such premiums as shall have been received and not returned; and in which account of losses shall be reckoned and comprised, not only all sums paid or payable by the said (*underwriter*), as such insurer, but also all such costs, charges, and expenses incured in ascertaining the extent of his liability in respect of any of the said insurances, and the balance of profit (if any) after abating any sums then due to the said (*broker*), for or on account of his aforesaid salary or allowance and commission, shall, within one calendar month thereafter, be paid to the said (*underwriter*). AND &c. (*here may be inserted an agreement to dissolve the agency on notice* (1), *and to refer disputes to arbitration* (2)). IN WITNESS, &c.

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(1) See *ante*, p. 26. (2) See *ante*, p. 27.

No. X.

An Agreement between a Builder and his Employer, for Building a House, &c. *all Materials being found by the* Builder (1).

Variations where the Materials are found by the *Employer.*

ARTICLES of agreement, entered into this day of in the year of our Lord BETWEEN (*the builder*) of, &c. of the one part, and (*the employer*) of, &c. [by (*an agent*) of, &c. duly authorized thereunto *if so*] (2) of the other part, as follow, that is to say, the said (*builder*) for the consideration hereinafter mentioned, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said (*employer*), his heirs (2), executors, administrators (3), and assigns, that he the said (*builder*), his executors, or administrators, shall and will, at his and their own proper costs and charges, erect and build in a good and substantial and workmanlike manner, a messuage or dwelling-house at, &c. in such manner, and within such time, as are hereinafter expressed and limited, and conformably to the plan and elevation thereof, delineated in the margin of these

Covenants by builder to erect a messuage, &c. agreeably to plan at his own cost.

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(1) See other forms of Building Agreements, 1 Bythw. Precedents 52. 275. 305, which promises to be, when finished, a very valuable publication. See also 1 Wms. Precedent, 645. 647. 657. 668. 673. and 1 Newn. 68.—See likewise *ante*, Vol. IV. No. IV. p. 36.

(2) In an agreement by an agent on the part of his principal, for building a house, &c. the principal will be bound although no *special* authority to make the specific contract be proved, so that the general authority be sufficient to comprehend the terms of the agreement. Hall v. Holt, 2 Vern. 322.; 3 P. Wms. 223. S. C.; Duchess of Marlborough v. Strong, 5 Vin. Ab. 533; 2 Eq. Ca. Ab. 19, pl. 11; 1 Brow. P. C. 175; see Fenn v. Harrison, 3 Durnf. & E. 757; Wyatt v. Marq. Hertford, 3 East, 147.—See *ante*, p. 17, in notes.

Principal bound by acts of agent.

(3) If the owner of an estate of inheritance agree for the building of a house, &c. and die, the heir has a right to the benefit of the contract out of the personal estate, and consequently to call upon the executors, &c. for performance of it. Lechmere v. Carlisle, 3 P. Wms. 223. 227; Ca. Temp. Talb. 80.

Heir has the benefit of his ancestor's contract.

AGREEMENTS.
Build.

presents, [in, of, or for the consideration or sum of £ to be payable and paid at the time, and in the manner hereinafter expressed concerning the same *if such the agreement*] (1). AND at his and their like expence, shall and will do, perform, and execute, or cause to be done, performed, and executed, in a good, substantial, and workmanlike manner, and agreeably to the directions and approbation of A. B. of, &c. surveyor, or other the surveyor or surveyors, to be from time to time appointed by the said (*employer*), his heirs or assigns, all such excavations, levellings, spreadings, works, matters and things, in and about erecting the same, as shall be by such surveyor deemed or considered necessary or proper in relation thereto, and shall and will, at his and their own like costs and charges, find and provide all, and all manner of bricks, tiles, stones, lime, nails, lead, iron, brass, timber, wood, wainscot, glass, and all other materials and things, and all scaffolding, tackle, tools, utensils, and workmanship whatsoever, necessary and sufficient, and that can, shall or may be required to be used and done, in and about the erection of the said messuage or dwelling-house. AND shall and will complete and finish the same, fit for the habitation and reception of the said (*employer*), on or before the day of , which will be in the year of , accidents by fire, storm, or tempest only excepted (2), and in all things agreeably to the specification or description, and particulars hereinafter expressed, that is to say (*insert here the particulars*). AND the said (*builder*) doth hereby declare and agree, that he, his heirs, executors, and administrators, shall be accountable for the full performance of this contract, and by the signing hereof, admits that the said plans, specifications, descriptions, and particulars, before referred to, are sufficient to their intended purpose, and that without any additional or extra work, other than the works set forth thereby, or necessarily

Under the inspection of the employer's surveyor.

To be completed in a given time.

Builder engages to finish agreeably to specifications.

Materials found by employer.

(1) If the materials are to be found by the employer, say,

"And also that the said messuage or dwelling-house and buildings, shall be erected and built with such bricks, stone, lime, timber, and other materials as shall be provided for that purpose by the said (*employer*), his heirs, or assigns."

Accident.

(2) An agreement for the performance of a thing should contain an exception against accident, for otherwise he will be bound by his stipulation, notwithstanding any obstacle arising by accident; for although the law excuses accident against an implied covenant for performance, yet it will not against an express covenant. See Burke v. Hodson, 3 Maul. and Selw. 267; Thornborough v. Whitaker, 2 Ld. Raym 11. 64.

inferred to be done from the general nature and tendency of the plans and descriptions aforesaid, and that the whole of the said works shall be done to the entire satisfaction of the said surveyor, and in all respects according to the intent and meaning of the specifications aforesaid, upon every sentence whereof a fair and liberal construction shall be made. AND that if any materials shall be brought in which shall not be approved of by the said surveyor, he the said (*builder*), his executors, and administrators, shall take them away at his and their own expence, and provide such other materials in lieu thereof, as the said surveyor shall approve. AND that if any part of the said materials or work shall be ordered not to be used or done respectively, under the hand-writing of the said surveyor, the same shall be withdrawn, and the difference of expence occasioned thereby shall be deducted from the amount hereinafter agreed to be paid to the said (*builder*), his executors, administrators, and assigns; and in like manner if the said surveyor shall in writing under his hand, order any materials, or work to be used or done, not included in this contract, the difference of the expence to be so occasioned, shall be added to the amount of the sum so to be paid; but no account or allowance shall be had or made in respect of any work omitted to be done, nor of any extra works which shall be done, unless the same be omitted or done, by an order in writing under the hand of the said surveyor (1); and all accounts and allowances for such omission or extra works respectively, shall be ascertained and settled by the said surveyor from time to time as they shall be made or take place; and in case of any differences between the said (*builder*) and the said surveyor in relation thereto, then the same shall be referred to C. D. of, &c. surveyor, at the expence of the said (*builder*), his executors, and administrators, and the determination of the said C. D. shall be final and conclusive upon both parties, &c. (2). AND in case the said work shall not be completed and finished,

Materials not approved of to be replaced.

Allowance to be made for substracted or extra work.

If builder and surveyor differ, reference to be made to a third surveyor.

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(1) When a builder contracts for a particular sum, and additions are afterwards made to the original plan, this will not invalidate the agreement, further than to the extent of the variations, unless they be so material as to alter the general plan and nature of the building. See Pepper v. Barland, Peake, 103.

Variations in plan do not vitiate the whole of a contract to build.

(2) If the contract be for the erection of any building, in which it is likely variations from the original plan proposed may be necessary, say,

Provision for variation in original plan.

"AND further that if the said (*employer*), his heirs, or assigns, or the said surveyor, shall, in writing under his or their respective hands, during the progress of the building, erecting, and completing

AGREEMENTS. *Build.*

and the said house shall not be fit for habitation, on or before the said day of , the said (*builder*) doth hereby agree to pay to the said (*employer*), his heirs or assigns, as and for liquidated or assessed damages (1) to be incurred by such default, the sum of £ per week, for every subsequent week, until the said works shall be so completed and finished. PROVIDED, &c. (2). AND in

Forfeiture for delay in finishing. Employer to pay as the work proceeds.

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the aforesaid erections and works, make, or cause to be made, any alterations in, or variations from the original plan and particulars of the said intended building, delineated in the margin of these presents, or heretofore particularly mentioned, either by adding to, or diminishing from the same, or by any other difference or deviation whatsoever, in all, or any part or parts of the said works respectively, such alterations, variations, or deviations, in, or from the said original plan or particulars, shall not in any wise alter the consideration to be paid to the said (*builder*), his executors, or administrators, as hereinafter mentioned, than as the same may vary or alter the quantum of materials and labour used and expended, in, or about the said works, nor in any wise vary or alter the mode hereinafter fixed and agreed upon, for the ascertaining and determining the quantum of materials and labour, so to be used and expended, but such altered plans and particulars shall be pursued and carried into execution, and the respective works necessary or required to be done for that purpose, shall be done and completed by the said (*builder*), his executors or administrators, in the same way and manner, and within the same time (either by the employment of an additional number of workmen, or such other mode as shall be necessary for the last mentioned purpose), as is and are in these presents covenanted or agreed to be done, performed, and executed, according to the plans and particulars now made or mentioned as aforesaid, and as if the said plans and particulars so to be substituted and required to be carried into execution by the said (*employer*), or the said surveyor, had been originally delivered to the said (*builder*) at the time of executing these presents."

Liquidated damages.

(1) Where a man agrees to pay a sum by way of liquidated damages on breach of covenant, a court of equity will not relieve him against the payment. Small v. Fitzwilliam, Prec. Ch. 102; Woodward v. Giles, 2 Vern. 119; but otherwise where the penalty is to secure the enjoyment of a collateral object, it then being holden to be imposed *in terrorem* only, ib. see also Hobson v. Trevor, 2 P. Wms. 191; Chiliner v. Chiliner, 2 Ves. 528; Slowman v. Walker, 1 Brow. Ch. Ca. 418; and see *ante*, Vol. I. No. I. p. 15. n. 30.

Penalty to be waved if default happen by accident.

(2) There may be inserted, if such be the wish of the parties, a proviso for the forbearance of the penalty to be incurred by not completing

consideration of the said works and agreements so to be finished by the said (*builder*) in manner aforesaid, he the said (*employer*) doth

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the building within the given time, if in the mean time it be destroyed by accident, in which case, say,

Waver of penalty.

" PROVIDED ALWAYS, and it is hereby further declared and agreed, by and between the said parties to these presents, that in case it shall happen that the said intended building shall be damaged, burnt down, or destroyed by, or by means of fire, storm, or tempest, at any time before the same shall be completely finished and fit for the habitation of the said (*employer*), then, and in such case, the penalty to be incurred for not finishing the said building, on or before the said day of , next ensuing, shall not be forfeited or become payable by the said (*builder*), his executors, or administrators, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding, but no such accident or event shall be deemed or construed to effect a revocation, annulment, or suspension of the contract hereby entered into, with respect to the erecting and completing the said house and works, any further or otherwise than may regard the time hereby limited for completing the same."

Materials found by employer.

If the materials are to be found by the lessor, there may be added,

" PROVIDED ALSO, and it is hereby further declared and agreed by and between the said parties to these presents, that in case any of the works hereby covenanted and agreed to be done, performed and executed by the said (*builder*), his executors, or administrators, shall be stopped, hindered, or prevented by reason of the want of bricks, timber, lime, stone, or any other materials to be supplied for the same by and at the expence of the said (*employer*), his executors, and administrators, and the said (*builder*), his executors, and administrators, shall prove to the satisfaction of the said surveyor that such stoppage, hindrance, or prevention, was occasioned by such want of bricks, timber, lime, stone, or other materials as aforesaid, then, and in every such case, the time hereinbefore limited for the finishing and completing such several works as aforesaid, shall be extended without the incurring the said penalty in respect thereof, to so long a time after the said day of as such works and buildings shall have been so stopped, hindered, or prevented from proceeding, by reason of such want of bricks, timber, lime, stone, or other materials as aforesaid, and so from time to time, as often as any such stoppage or hindrance shall take place, but not for any longer time, or on any other account or pretence whatsoever."

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hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said (*builder*), his executors, administrators, and assigns, that he the said (*employer*), his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said (*builder*), his executors, administrators, or assigns, the sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, in manner following, that is to say, the sum of £75 per cent. on the amount of the works as the same shall proceed or go on, in sums not less than £ , at each payment, and which said per centage shall be ascertained by the said surveyor, and upon his certificate of the same being produced to the said (*employer*), his heirs, or assigns, shall be paid to the said (*builder*), his executors, administrators, or assigns, accordingly (1). AND that the accounts of the said works shall be adjusted and finally settled, within three months after the said works shall have been completed and finished, in the manner aforesaid, and when, and as soon as the said accounts shall be adjusted and finally settled, the rest and residue of the said sum of

And the whole within three months after the work is finished.

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(1) If the materials be found by the employer, add,

Materials to be provided upon notice.

"AND FURTHER, that the said (*employer*), his executors, and administrators, shall and will find and provide, and cause to be delivered, at the place where the said messuage or dwelling-house is hereinbefore covenanted to be erected, and that from time to time, as and when the same shall be required and wanting, reasonable and sufficient notice being at all times, and from time to time given by the said (*builder*), his executors, or administrators, all such bricks, lime, sand, stone, timber, nails, and other materials as shall be necessary and proper for building and finishing the said messuage or dwelling-house.

There may be here added if such be the agreement,

Employer to find money to pay weekly wages of labourers.

"AND ALSO that he the said (*employer*), his executors, and administrators shall and will provide and supply the said (*builder*), his executors and administrators, weekly and every week, during the progress of the said works, and until the same shall be finished, with all such sum and sums of money, as shall be necessary for the purpose of paying and discharging the wages of all workmen and labourers, that shall from time to time be employed in or about the said works, the amount thereof to be ascertained in the manner hereinbefore provided."

£ , and also such further and other sum and sums of money, as may accrue and become due, for or on account of extra works (1), shall be by him the said (*employer*), his heirs and assigns, well and truly paid to the said (*builder*), his executors, administrators, or assigns (2). AND LASTLY, for the true performance of all and singular the articles, clauses, agreements, matters, and things, hereinbefore mentioned, the said (*builder*) doth bind himself, his heirs, executors, and administrators, in the penal sum of £ (3) IN WITNESS, &c.

AGREEMENTS.

Build.

Penalty.

Extra works.

(1) An employer deviating from the original plan of elevation, does not vacate an agreement for completing the contract for a specified sum; but only subjects himself to the payment of such further sum as the extra work may amount to. Robson v. Godfrey and Another, Holt's Ni. Pri. Cas. 236; Pepper v. Burland, Peak, 103.

Builder to be accountable for all materials when delivered.

(2) If the materials be found by the employer, it will be proper in order to protect him from any loss which may happen from their being improvidently used, to insert the following proviso,

"PROVIDED ALWAYS, and it is hereby mutually declared and agreed, by and between the said parties hereto, in order to prevent and protect the said (*employer*), his executors and administrators, from not only all unnecessary waste in the converting and using up of the materials, but also by the loss thereof, by the pilferage of the workmen to be employed in the said building, or by any other ways and means, that he the said (*builder*), his executors and administrators, shall be accountable for all the materials which shall be delivered for the said building at the place where the same is intended to be erected, and shall be charged with the respective quantities of such articles so delivered, and credited with so much only as shall be actually used and expended in, about, and upon the said building and works, together with a reasonable allowance for waste in the working up of the same, and in case there shall be any balance or deficiency of materials, between the respective quantities delivered and the respective quantities used and expended, and allowed for waste as aforesaid, then the said (*builder*), his executors and administrators, shall be accountable for, and charged with all such balance or deficiency, at and after the rates and prices respectively at which the said materials were purchased and laid in.

Specific performance decreed, notwithstanding penalty.

(3) Notwithstanding a penalty be annexed to the non-performance of an agreement, the court will decree a specific performance if applied to for that purpose, and not allow the party to avoid performance by forfeiture of the penalty. Jenkyns v. Keymes, 1 Lev. 150. 237; 1 Ch. Ca.

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Specific performance decreed notwithstanding penalty.

103; Howard v. Hopkins, 2 Atk. 371; unless in the case of a mere volunteer; Stapleton v. Stapleton, 1 Atk. 2; Hamilton v. Grant, 3 Dow. 53; or the subject of the agreement be a chattel or mercantile interest; Buxton v. Lister, 3 Atk. 383; Underwood v. Heathcox, 1 Ves. 279. Nutbrown v. Thornton, 10 Ves. 161; where the remedy at law is more expeditious and equally effective; and see *ante*, Vol. I. No. I. p. 15, n. (30).

No. XI.

An Agreement for building several Houses, *or a new* Street *or* Row (1).

ARTICLES of agreement made and concluded the day of , in the year BETWEEN (*the employer*), of, &c. of the one part, and (*the builder*), of, &c. of the other part. Whereas the said (*employer*) is possessed of a piece of ground situated, &c. and containing, &c. upon which he is desirous of building a row or street, (2) and hath contracted with the said (*builder*) for building and completing the same, in the manner and upon the terms and conditions hereinafter mentioned. NOW THESE PRESENTS WITNESS, That the said (*builder*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*employer*), his executors, administrators, and assigns, that he the said (*builder*), his executors or administrators, shall and will at his and their own proper cost and charges erect messuages or dwelling-houses in one continued line or row upon the said piece or parcel of ground according to the elevation delineated in the ground-plot or plan thereof, drawn in the margin of these presents, and with such proportions of brick, and such scantlings of timber, heights and numbers of stories, as hereafter is mentioned, that is to say, The cellars and all other stories of the said messuages to be of such heights as is set forth for the second rate of buildings, in the act of Parliament, passed in the year of the reign of , entitled "An Act", &c. the fore fronts and back fronts to be two bricks and a half thick to the top of the cellar-floor, the first and second stories to be two bricks in the thickness, the third story above ground to be one brick and a half in thickness, and the garret one brick in thickness; the partition walls between house and house to be two bricks in thickness at the least to the top of the cellar stories, and from thence to the garret-floor to be one brick and a half in thickness at the least, and above the garret-floor one brick in thickness; the brick work in the fore fronts to be wrought with stock bricks not rubbed, the

WITNESS.
Builder agrees to build.

Plan of elevation.

(1) See notes to No. X. *ante*, p. 59.

(2) See also *ante*, Vol. IV. No. IV. (p. 32.) and No. XV. (p. 198.), where other plans of buildings, &c. will be found.

Square.

AGREEMENTS. *Build.*

straight arches in the front to be a brick and a half, and to rub the bricks round the jambs of the window in the brick work of the fore fronts, and to work a *fasia*, at every story of each house in the front, with O G at the foot of it; that the said bricks shall be a good and sufficient well burnt brick, and the morter well wrought and tempered, and made of good lime and sand or such other stuff as the said (*employer*) or his surveyor shall appoint; that there shall be a balcony of wood or iron to the front of every house, which shall not project more nor less than three feet and a half beyond the upright of the said houses, with cantiliver cornice all along the said front to street according to a model thereof to be signed by the said (*employer*) or his surveyor. There shall also be, &c. &c. (*describing the particulars.*) And that no timber shall be laid within twelve inches of the fore sides of the chimney jambs, and that all joices on the back of any chimney shall be with timber at six inches distance from the back, and that no summers or girders shall lie over the heads of any doors or windows, and that all the ends of timber being in the wall shall be laid in loom, that all mantle trees shall be oak timber, and not less than seven and nine inches, that the tassels shall be of oak three inches thick, and to reach within four inches of the back of the chimney, &c. &c. And shall and will make a common sewer down and along the middle of the said street of feet circumference, with good bricks. And also shall and will make drains from the said houses into the said sewer. And that no house of office shall have issue into the same. And also shall level and pave the said street so far as to the middle of the same, and shall pave along the said ground four feet in depth from the upright of the said walls of the said building, with Purbeach or Swindon stone, descending one inch at least from the wall; and set up oaken posts of seven inches square, and three feet and a half above the ground, twelve feet each from the other, all along before the said ground in the street, at five feet distance from the upright of the said wall. And make kennels all along the said street, next the said posts. And that all and every of the said houses shall be well and properly glazed, slated, and plastered, and in all things completely finished as to brick, carpenters', plasterers', smiths', glaziers', plumbers', painters', and other work whatever, and made fit for habitation on or before the day of next ensuing the date of these presents. AND, &c. (*add covenant by employer to pay* (1), *&c. and penal and arbitration clauses.*) (2)

Penalty and arbitration.

(1) See *ante*, p. 62, and *post*. p. 70.

(2) See ARB. *ante*, p. 27. and PENALTY, *ante*, p. 65. and *post*. p. 70.

No. XII.

An Agreement with a Builder *to take down and rebuild* the Front of a House, and do other Repairs (1).

ARTICLES of agreement made and concluded this day of , in the year , BETWEEN (*the employer*) of, &c. of the one part, and (*the builder*) of, &c. of the other part. WHEREAS the messuage or dwelling, hereinafter described, is greatly dilapidated, and requires to be wholly new fronted and otherwise repaired. And whereas this said (*builder*) hath agreed with the said (*employer*) to complete the same for the sum of £ , in the manner and within the period hereinafter mentioned. NOW THESE PRESENTS WITNESS that the said (*builder*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*employer*), his executors, administrators, and assigns, that he the said (*builder*), his executors, administrators, or assigns, shall and will at his and their own proper costs and charges make, do, complete, and finish in a proper and workmanlike manner, and with good, substantial, and sufficient materials of every kind the several alterations, reparations, and amendments hereinafter particularly mentioned or described in and to a certain messuage or dwelling-house and premises situated, &c. and now or late in the occupation of, &c. (that is to say) shall and will take down, and wholly remove the whole front of the said messuage or dwelling-house, and rebuild the same with the best new Greystock bricks, with the following other works: a new brest summer with story posts and oaken plate, all the floors to be shored while the front is pulling and remaining down, a principal rafter's foot to be secured by a base and a shore, the shop floor to be new laid with whole deal boarding, new casements to be made to the back front, the whole house to be thoroughly repaired inside and outside, and all the plastering mended and whitened, the scantling of the brest summer to be 12 inches by 14 inches, the story posts to be 12 inches by 7 inches, the oaken plate to be 12 inches by 7 inches,

WITNESS. Builder covenants to new front, &c.

(1) See notes to No. X. *ante*, p. 59.

AGREEMENTS. *Build.*

and cross pieces to be laid in the wall before the plaster is laid on, all the window frames, window casements, out doors, and door cases, cantilivers and cornices of the said house, &c. to be painted with good colours well laid in oil, and all the front windows to be glazed with good square glass well leaded, &c. &c. (*as the case may require*). AND also that the said house and all and every the matters and things aforesaid, shall be in all things wholly and completely finished on, by, or before the day of now next ensuing, according to the true intent and meaning hereof, accidents by fire, storm, and tempest, only excepted (1). AND if it shall happen that the said work or any part thereof shall not be so completed according to the true intent and meaning of these presents, by the day of (accidents aforesaid only excepted), that then he the said (*builder*), his executors or administrators, shall and will well and truly pay or cause to be paid unto the said (*employer*), his executors, administrators, or assigns, the sum of 10*s.* sterling by the day, for every day which the said work or any part thereof, shall thereafter remain and be in any respect unfinished (2). AND moreover he the said (*builder*), his executors or administrators, shall and will from time to time and at all times hereafter, well and sufficiently save and keep harmless and indemnified the said (*employer*), his executors, administrators, and assigns, and the said messuage or dwelling-house and premises, and all and every other, his and their other lands, tenements, goods, and chattles, from and against all fines, pains, penalties, punishments, and forfeitures whatsoever, which shall or may be incurred by reason of any irregularity or default, which there shall be in the said building or any part thereof, under or by virtue of or contrary to any act of parliament now or then in force, touching the building, rebuilding or repairing of houses. AND it is hereby agreed that all the old timber and other materials which shall be taken away from the aforesaid buildings and reparations, shall belong to and be considered the absolute property of the said (*builder*), his executors and administrators. And in consideration, and upon condition of the said work hereby so done and completed as aforesaid; he the said (*employer*) for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with, &c., and to the said (*builder*), his executors, administrators and assigns, that he the said (*employer*), his executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said (*builder*), his executors, administrators,

Penalty on non-performance.

Indemnity against building act.

Covenant by employer to pay, &c.

Accidents.

(1) See *ante*, p. 60. n. (2).
(2) See *ante*, p. 41. n. (1). 62. n. (1.) (2).

or assigns, the said sum of £ of lawful and current money of Great Britain, in manner, as follows (that is to say): the sum of £ part thereof on the day of now next ensuing, and the sum of £ residue, and in full thereof, within days next after the said messuage, or dwelling-house and premises shall be so completely repaired and amended, and other the said work done in the manner aforesaid, and according to the true intent and meaning of these presents. And (*here may properly be added a clause referring disputes to arbitration* (1)).

Arbitration.

(1) See *ante*, p. 27.

AGREEMENTS.
Build.

No. XIII.

An Agreement by a Landlord (*or Tenant*) *to* build *up Premises destroyed by Fire.*

ARTICLES of agreement indented made the day of , in the year 18 BETWEEN (*the lessor* or *lessee*, being the party agreeing to rebuild) of, &c. of the one part, and (the *lessee* or *lessor*) of, &c. of the other part. Whereas, &c. (*recite the lease from the lessor to the lessee, and the covenant to insure*) and that in the said indenture there was, among other things, contained, a covenant on the part of the lessor or lessee (*as the case may be*) to cause the insurance money to be expended in rebuilding or repairing such part of the premises as might be destroyed or damaged by fire; that the premises were insured in the *said* office; that the premises or a part (*stating the fact*) were consumed or damaged by accidental fire; that the insurance office has declined to rebuild, &c. and has paid down the insurance money, and that the lessor or lessee in pursuance of the covenant in the said indenture contained in that behalf, has agreed to rebuild the same under the stipulations hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and of the said covenants in the said in part recited indenture of lease contained, and for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland current in England, to the said (*lessor* or *lessee*) paid by the said office or company, called the Insurance Office; he the said (*lessor* or *lessee*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*lessor* or *lessee*), his executors, administrators, and assigns, That he the said (*lessor* or *lessee*), his (1) executors or administrators, shall and will within the space or time of calendar months from

WITNESS. Covenants to rebuild, &c. according to plan;

(1) If the lessor is to rebuild, and the premises are freehold or copyhold, add "heirs."

AGREEMENTS.
Build.

or next after the day of the date of these presents, erect and build or cause to be erected and built, in a good, substantial and workmanlike manner in all things (1) a messuage, &c. (*as the case may be*) in and according to the same or like elevation, plan, form, and manner as the same was or stood before the same was so consumed by fire, (being the elevation, plan, and form and manner mentioned in the schedule or specification thereof hereafter written). And also that he the said (*lessor* or *lessee*) shall and will find and provide such good and proper materials of all kinds whatever, as, together with the materials not consumed by the said fire, and are sound and good, shall be sufficient for erecting and completing the said messuage, &c. according to the plan and in the manner aforesaid. PROVIDED always nevertheless, and it is hereby declared and agreed, by and between the said (*lessor*) and (*lessee*), that in case either of the said parties, his executors, administrators, or assigns, shall require any more or other work, additions or improvements to be made or done, in or about the said messuage or premises (saving the repairing thereof) than is contained in the schedule hereunder written, and the other of the said parties shall consent thereto, the same shall be made and done at the sole expense of the party requiring the same, his executors, administrators, or assigns, unless otherwise agreed by or between the said parties, to be testified in writing under their respective hands subsequently to the date of these presents. And whereas the said in part recited indenture of lease is lost or destroyed; now it is hereby further agreed and declared, that the said (*lessee*), his executors, administrators, and assigns, shall have a new lease granted, or indenture of lease executed to him and them by the said (*lessor*), his [heirs], executors, and administrators, at the request and costs of him the said (*lessee*), containing the same or like terms, conditions, covenants and agreements in all respects, for the residue now to come of the term of years by the said indenture of lease granted as the same indenture, and the counterpart thereof does or did contain in relation to the said lease and premises, and that in the mean time and until such lease shall be granted or indenture executed, he the said (*lessee*), his executors, administrators, and assigns shall have, hold, and enjoy the messuage, &c. so to be newly erected and built as aforesaid, with all and every the appurtenances thereof, upon and subject to the same or like terms, conditions, covenants and agreements respectively, save

and provide materials.

Deviations from plan.

New lease to be granted.

In mean time lessee to enjoy.

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(1) If the lessee is to build, add, "under the superintendence, and to the approbation of the surveyor of the said (*lessor*)."

AGREEMENTS.
Build.

only that an abatement after the rate of the sum of £ per annum, shall be made and allowed to him and them, until such time as the said messuage, &c. shall be rebuilt and be put into a tenantable state or condition. And moreover that he the said (*lessee*) will execute a counterpart of the said indenture when tendered to him for that purpose. AND, &c. (*add clause for referring differences to arbitration*). (1) IN WITNESS, &c.

Arbitration.

SCHEDULE, &c.

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(1) See *ante*, p. 27.

No. XIV.

An Agreement by a Parish *(or a Body of Joint Proprietors) for erecting a* Workhouse *or other* Public Building (1).

ARTICLES of agreement [indented], made, and entered into, the day of in the year of our Lord 18 , BETWEEN the Reverend A. B. rector and parson of the parish of in the county of of the first part, C. D. and E. F. both of the same parish, and being respectively churchwardens, and G. H. overseer thereof, of the second part, and I. K. of, &c. master bricklayer, mason, and builder, of the third part. Whereas at a public meeting of the inhabitants and parishioners of the said parish, holden on the day of , at the vestry of the said parish, it was resolved and agreed that a new workhouse and poorhouse for the reception of hundred paupers or persons should be forthwith erected for the use of the said parish. And that the proposals then and there made by the said (*builder*) for building the same according to the plans, elevations, and sections designed and prepared by (*an architect*), and then produced, for the sum of £ , should be accepted. And it was also agreed, that the said rector, churchwardens, and overseer of the said parish for the time being should be appointed, and they were then and thereby accordingly named and appointed for seeing the said agreement carried into effect on behalf of the said parish, and to execute such deed or other instrument in writing with the said (*builder*) and others as should be deemed requisite or expedient in that behalf. And the said (*rector*, &c.) by virtue of the power and authority so then vested in them by the parish, have appointed, and by these presents do appoint the said (*architect*) surveyor and superintendant of the works to be performed. NOW THESE PRESENTS WITNESS, that for carrying the said proposal and agreement into execution, the said (*builder*) for himself; and the said (*rector*, &c.) for and on the part and behalf

Recitals.

WITNESS.
Builder covenants to build.

(1) See a good precedent for building a Bridge, 1 Bythw. 310.

AGREEMENTS. *Build.*

of the said parish of , do hereby mutually and reciprocally declare, contract, and agree as follows. And first, in consideration of the covenants and agreements hereinafter entered into and contained by the said (*rector*, &c.), and to be performed on the part of the aforesaid parish, he the said (*builder*) for himself, his heirs, executors, and administrators, doth covenant, promise, contract, and agree, with and to the said (*rector*, &c.) and their successors, that he the said (*builder*), his executors or administrators, will at his own proper costs and charges forthwith begin, and in an expeditious and workmanlike manner, erect, build, and finish the said house or building, agreeable to the said elevation, plans, and sections, and particulars aforesaid, and under the direction and to the reasonable satisfaction of the said (*surveyor*), or other the surveyor for the time being of the said parish. And also find, furnish, and provide all the materials and timber incident or necessary to the so building the same, all the said materials being the best of their several kinds, and to be approved of by the surveyor of the works for the time being of or for the said parish; and also provide at his own expense all proper scaffolding for the said work, and erect and keep a proper bound or fence round the same, of the height of feet or more, during the whole progress, and until the said building and works shall be completed. And also that all out-houses and other conveniences relative to, but not being an integral part of the said intended workhouse or building, not hereinbefore contracted for, and agreed to be erected and built in any particular manner, nor included in the aforesaid elevation or plan, shall be constructed with such materials, and executed and performed in such manner as the surveyor of the said works for the time being shall direct, and shall be paid for by the said (*rector*, &c.) separately and apart from the rest of the said works, by admeasurement and valuation, in the ordinary and usual way with builders and their employers. Provided always, and it is agreed and declared between all the said parties, that if the said (*rector*, &c.) or any two of them, shall at any time or times hereafter think proper to direct any alterations or deviation to be made in the form or quantities, or elevation, or plan of the said building or other the work hereinbefore agreed to be done, before the same shall be performed, the same shall not in anywise make void, impeach, or prejudice these presents or the said contract. (1) But then, and so often, and in every such case, he the said

Outhouses to be separately paid for.

Abatement on extra-charge for subsequent alterations.

Alterations.

(1) Any alterations made in the building subsequently to the original plan might, without this stipulation, vacate the contract; but see, *ante* p. 61., n. (1).

(*builder*), his executors and administrators, shall (1) attend to and pursue such directions as he shall in that behalf receive from the said (*rector*, &c.) or any two of them, and execute and perform the same in a proper and workmanlike manner; and in every such case it shall be referred to the surveyor for the time being of the said works to consider, and by some writing under his hand to determine how far such alterations or deviations will on the whole be a saving or additional expense to the said (*builder*), his executors and administrators, and if the same shall appear to be a saving, the amount thereof shall be abated out of the last instalment or payment of the said sum of £ agreed to be paid for the said work as aforesaid; but if the same shall occasion an additional expense, then the amount thereof shall be paid to the said (*builder*), his executors and administrators, by the said (*rector*, &c.), over and above the said sum, within three calendar months next after the completion of the said works. And the said (*builder*) doth hereby, in the manner and form aforesaid, further covenant, promise, contract, and agree, with and to the said (*rector*, &c.), their successors and assigns, that if any of the materials hereinbefore agreed to be provided or employed by him in or about the works of the said intended building, shall be found by the surveyor of the said works for the time being to be unsound, defective, or of bad quality, then, and in every such case, all such bad or defective materials shall be forthwith removed by and at the expense of the said (*builder*), his executors and administrators, and other materials of a better and good and fit quality and kind in all respects shall be immediately provided and made use of, in the place and stead of such as shall be deemed bad or defective. And also, that if any part of the said building or works shall be found by the said surveyor to be defective in point of workmanship, disposition of the materials or otherwise howsoever, during the progress or after the performance of the same, then, and in every such case, such defective work shall be forthwith pulled down and demolished at the expense of the said (*builder*), his executors and administrators, and immediately thereafter rebuilt in a more complete and a proper and workmanlike manner, in all respects to the satisfaction of the

Bad materials to be displaced.

Bad work to be pulled down.

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(1) Or more concisely, Conciseness.

"That in case any deviation from the said plan shall be made by the direction of the said (*rector*, &c.) the value thereof in augmentation or diminution of expense, shall be ascertained by admeasurement and valuation; and the amount thereof be added to or deducted from the said sum of £ as the case may require."

AGREEMENTS. *Build.*

said surveyor. And further, that if the said (*builder*), his executors and administrators, shall not after days' notice given to him or them, or his or their foreman, by the said surveyor, of such unsound materials, or materials deemed improper, remove the same, it shall be lawful for the said surveyor to cause the same to be removed to such place as he may think proper, without any liability on his part, or on the part of the said (*rector*, &c.) for any loss or damage which may happen to the said materials to be substituted in lieu of the materials which shall be so objected to as aforesaid; or in case of any part of the said works being improperly executed as aforesaid, to cause the same to be demolished and re-executed by such workmen as he shall think fit; and in either of the said cases, the said (*builder*) shall and will pay all such costs, charges, and expenses as shall be incurred in the removal of such materials as aforesaid, and in the substitution of such materials in lieu thereof, or in the demolition and re-erection of all such parts of the said works as aforesaid, or the same shall be deducted from the balance which shall remain of the said sum as liquidated damages; and shall and will on the completion of the said building and works, remove and carry off all the scaffolding, board, and fencing, erected for performing the same, and all rubbish and materials then remaining in or about the same, and leave the whole of the said works in a perfect and proper state and condition. And moreover, that he the said (*builder*) shall and will during the whole time of building, and until the completion of the said intended building and works, give due personal attendance upon the execution thereof, in order that the same be carried on, executed, and performed in a proper manner in every respect, and with such expedition and despatch that the said workhouse or building may be fit for use and habitation on or before the day of now next ensuing. And further that if it shall happen that the said intended workhouse or building shall not be completed and finished fit for use and habitation within the time aforesaid, through or by reason of any neglect or default of the said (*builder*), his executors or administrators, he the said (*builder*), his executors or administrators, shall and will forfeit and pay unto the said (*rector* &c.) and their successors the sum of £ of lawful current money of Great Britain, by, from, and after the said day of until the same shall be so finished and completed, which forfeitures shall or may be retained and deducted out of so much of the said sum of £ as for the time being shall remain unpaid. And the said (*rector*, &c.) in consideration of the covenants and premises aforesaid, do hereby for themselves respect-

Builder will give personal attendance.

Covenant by employer for payment of the sum contracted for.

ively, and for their respective successors (so far as they lawfully and rightfully can or ought by the rules of law and equity, but not any one for the other of them, nor for their own respective personal representative), covenant, promise, contract and agree, with and to the said (*builder*), his executors and administrators, that he the said (*builder*), his executors and administrators, duly executing and performing all and every the articles, clauses, covenants, agreements, matters and things, on his and their parts to be observed, done, and performed, according to the true intent and meaning of these presents, they the said (*rector*, &c.) and their successors, shall and will pay or secure to be paid to the said (*builder*), his executors or administrators, the full and just sum of £ for the completing and building the said intended work-house or building and works aforesaid in several instalments, at the times and in the manner following: that is to say, the first instalment or sum, when the brick-work of the said building shall be carried up level with the one pair floor, the second instalment or sum when the roof of the said building shall be completely covered in; and which said instalments or sums it is hereby agreed shall respectively be of an amount equal to three-fourth parts of the value of the works which at the said respective times or periods shall have been performed, as certified under the hand of the surveyor thereof for the time being, and the third or last instalment or sum (in completion of the said sum of £ and also such further other sum as may have been occasioned by any such alterations or deviations from the original or present plan of the said buildings or works as aforesaid) within three calendar months next after the said buildings and works shall be wholly completed and perfected according to the tenor and true intent and meaning of these presents. Provided always, and it is hereby declared and agreed between the several parties hereto, that if damage by storm, tempest, accidental fire, or other inevitable accident, should happen to the said works, which it shall not be in the power of the said (*builder*), his executors or administrators, to prevent, the same shall be made good and repaired at the expense of the said (*rector*, &c.), but if such damage shall have happened or be occasioned by or through any neglect or default of the said (*builder*), his executors or administrators in any wise, then the same shall be immediately repaired and made good at his and their own proper cost and expense. And lastly, for the due performance of all the covenants and undertakings herein contained, on the parts of the said (*builder*), his executors and administrators, he the said (*builder*) doth hereby bind himself, his heirs, executors, and administrators, to the said

By instalments according to progress.

Accidents to be borne by the employer.

Penalty.

AGREEMENTS. *Build.*

(*rector*, &c.) and their successors, in the sum or penalty of £ in addition to the aforesaid penalty or sum of £ per month should the same be incurred (1). AND (*add clause of referring differences to arbitration* (2)). IN WITNESS, &c.

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(1) If materials are to be found, or any thing to be specifically performed by the employer, a similar penal clause may be inserted in case of his default.

Arbitration. (2) See *ante*, p. 27.

No. XV.

An Agreement for Building *a Merchant Ship or Vessel.*
Variations where it is for repairing a ship.

ARTICLES of Agreement indented and made the day of in the year 18 , BETWEEN (*a ship-builder*) of &c. ship-builder, of the one part, and (*merchant*) of &c., merchant, of the other part. Whereas (1) the said (*builder*) hath proposed and agreed to build for the said (*merchant*) the hull or body of a ship, or vessel, of the dimensions hereinafter mentioned, and to complete the same, in a workman-like manner, on or before the day of now next ensuing, for the price or sum of £ . NOW THEREFORE WITNESS THESE PRESENTS, that in pursuance of the said agreement he the said (*builder*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with, and to the said (*merchant*), his executors, administrators, and assigns, that he the said (*builder*) shall and will construct, build, and complete, for him the said (*merchant*), his executors, administrators, or assigns, the hull of a ship, or vessel, of the descriptions and dimensions, and in the manner particularly mentioned and set forth in the schedule, inventory, or specification hereunder written or hereunto annexed; and when so constructed and finished the same shall, on or before the said day of be launched at or in the harbour of and from thence be brought and safely moored at . AND THESE PRESENTS FURTHER WITNESS; that in consideration of the covenants and agreements hereinbefore contained by and on the part of the said (*builder*), he the said (*merchant*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise and agree, with and to the said (*builder*), his executors, administrators, and assigns, that he the said (*merchant*), his executors or ad-

WITNESS. Builder agrees to build.

FURTHER WITNESS. Merchant covenants to pay the sum agreed on.

(1) If the agreement be for the repair only of a ship, recite,

Repairs.

Whereas the ship or vessel called the belonging to the said (*merchant*), has been much damaged, and is greatly out of repair and condition. And the said (*builder*) has agreed completely to repair the same within calendar months for the sum of £ . Now, &c. (*as above.*)

AGREEMENTS.

Build.

ministrators shall and will well and truly pay or cause to be paid, unto the said (*builder*), his executors, administrators, or assigns, the sum of £ of lawful current money of Great Britain, at the time and in the manner following, viz. the sum of £ , part thereof upon laying the harpins of the said vessel; the further sum of £ other part thereof, upon laying the deck; and the further sum of £ being the residue, and in full of the said sum of £ , upon the said vessel being safely moored at or in the harbour of aforesaid. And the said (*merchant*) doth also hereby agree to provide for the carpenters employed in the building of the said hull, during such time as they shall be so employed, such allowances of bread, cheese, and ale, as are usual in such cases. Provided always, and it is also hereby further agreed by and between the said parties hereto, and particularly by the said (*builder*), that the hull of the said vessel, so to be built as aforesaid, shall from time to time, during the building thereof, and afterwards until the same shall be so moored in safety as aforesaid (and be assigned to the said (*merchant*), his executors or administrators, as hereinafter is mentioned), shall stand chargeable and charged with, and be a security to him and them for such sum and sums of money, as he or they shall in the mean time have advanced or paid to the said (*builder*), his executors, administrators, or assigns, under or in pursuance of these presents; to the intent that the said (*merchant*), his executors, administrators, and assigns, shall and may thereby be protected from or indemnified against being liable or subject to the debts, contracts, or engagements, or otherwise affected by any act of the said (*builder*), his executors or administrators. And the said (*builder*) doth hereby lastly agree and declare, that he the said (*builder*), his executors or administrators, shall and will, immediately after the said hull shall be so moored in safety in the harbour of as aforesaid upon request, and at the costs and charges of the said (*merchant*), his executors or administrators, assign the same, free from all incumbrances by him or them made or occasioned unto him the said (*merchant*), his executors, administrators, or assigns, in such manner as is usual or may be proper in like cases. Provided always, and it is hereby further declared and agreed by and between the parties hereto, that in case the said (*builder*), his executors or administrators, shall think himself or themselves entitled to, and shall claim any further or other sum or sums beyond or in addition to the said sum of £ so agreed to be paid for building the said ship as aforesaid, in order to complete the price of the said hull, the same shall within days from

Merchant to make customary allowances to workmen.

Ship to be a security against claims upon the merchant.

Builder will assign ship to merchant on its being completed and moored in

Further sum to be paid if awarded.

the time of mooring the said vessel in harbour, as aforesaid, be referred to the judgement and decision of of &c., and in case of his decease, or he shall refuse to undertake such determination, then to two indifferent persons, the one to be nominated by the said (*builder*), his executors or administrators, and the other, by the said (*merchant*), his executors or administrators, who, or a referee to be by them named as umpire, shall, within fifteen days from the time aforesaid, make or give his or their award or decision thereon. And the said (*merchant*), his executors or administrators, shall and will, within the space of days next thereafter, pay to the said (*builder*), his executors, administrators, or assigns, such sum or sums of money as shall be so awarded or adjudged. AND (*a general clause of reference may be added, for the determination of differences* (1) *and a penal clause may also be inserted here* (2)). IN WITNESS, &c.

SCHEDULE, OR SPECIFICATION

ABOVE REFERRED TO.

The hull of the said ship or vessel referred to in the above agreement shall be in length within the posts feet, the rake afore feet, the rake abaft suitable; the harpins to be at feet forward and aft. The hull at the dead flat to be in breadth feet, the birth thereof from the top of the ceiling to the top of the covering board; the square of the floor to be inches on the keel and inches at the sirmark; the timbers to be inches square at the binds and inches at the top timber heads; the transom to be feet long, the post feet broad, the plank from the keel to the binds to be inches thick, except five strokes on each side, or three on the bilge and two under the binds, which are to be inch plank; the hull to have three binds, each ten inches deep and seven inches thick, one stroke immediately above the binds to be inch plank, all the rest to the channel bind inch plank, and above the channel bind to be inch plank; to have hold beams inches square with forward; all whole transoms aft, and one hook to be ceiled with inch plank from the keel to the underside of the

(1) See *ante*, p. 27. Arbitration.
(2) See *ante*, p. 65. 70. Penalty.

AGREEMENTS. *Build.*

hold beams, except three strokes on the bilge on each side, which are to be inch plank; all the ceilings from the hold beams to the upper deck beams to be inch plank, except one long plank under the main deck beam, which is to be inch thick; to be ceiled fore and aft with inch plank, and above the binds forward with inch plank; to have one four-inch plank to be bolted to fore beam, and transom knees to be bolted through the side into the beams; the main deck to be laid with Norway deals inches thick to abaft the main mast, and from thence to be inch plank; to have a sufficient number of main deck beams; to have feet inches waste and two drifts fore and aft feet deep; the quarter deck and forecastle deck to be laid with Norway deals inches thick; the floors to be feet long with inches rise; the binds to have two foot and a half hang, the covering boards in the midships to be two inch and a half plank; to have windlass, capstan, catheads, rudder, and tiller, all of sound good oak, of a size and construction fit for such a vessel; to have gunports: all the timbers and planks to be made use of in building the hull of the said vessel (except the planks with which the decks are laid, and which are to be of Norway deal as aforesaid) are to be oak of English growth, well seasoned and dried, and in every respect fit for the purposes to which the same shall be applied; the trennels to be bought at and be of the best sort; the hatches to be made and constructed in the best and most approved manner; the hull and deck of the said vessel to be well caulked with well teased oakum, and fitted up and finished in a substantial and workmanlike manner, with all things necessary and usually made and provided by ship-builders for ships of such burthen and construction as the said vessel is intended to be.

No. XVI.

An Agreement for Building *a Merchant Ship, and to let the same to Freight* to a Merchant.

ARTICLES of agreement indented, made, and concluded this day of , in the year of our Lord 18 BETWEEN of, &c. (*merchant*) of the one part, and of, &c. (*shipbuilder*) of the other part. WHEREAS the said (*builder*) hath agreed with the said (*merchant*) to build a ship of the dimensions mentioned in the schedule hereunto annexed, No. I. (1), and to let the same when completed on hire to the said (*merchant*) to freight for several voyages to be made with her from London to and back again to London, on the terms and conditions mentioned in the schedule hereunto annexed, No. II. NOW THESE PRESENTS WITNESS, that in consideration of the premises the said (*builder*) for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said (*merchant*), his executors, administrators, and assigns, in the manner following: that is to say, that he the said (*builder*), his executors, administrators, and assigns, shall and will, at their own proper costs and charges in all things, build or cause to be built, within the space of calendar months from the date hereof, one good ship of not less than tons, and not exceeding tons burthen, and with such materials and to be furnished and provided in such manner as are particularly mentioned in the schedule, No. III. AND that when the said ship shall be completed, he the said (*builder*) shall let the same to him the said (*merchant*), for several and successive voyages at such freight and demurrage, and upon such terms and conditions as are particularly mentioned in the schedule hereunto annexed, No. IV. AND for that purpose the said ship shall at the costs and charges of the said (*builder*), his executors, administrators, or assigns, be from time to time repaired, fitted, armed, stored, and provided in all things according to the terms and conditions mentioned in the said last mentioned sche-

WITNESS.
Covenant by builder to build,

and let to hire when finished.

(1) See the form of a schedule of this kind, *ante* No. XV, p. 83. Schedule.

AGREEMENTS.

Build.

dule, and as the same ought to be repaired, fitted, armed, stored, and provided for the service aforesaid, according to the usage and customs of merchants. AND the said (*builder*) or other managing owner or owners of the said ship, and the commander thereof, shall and will from voyage to voyage enter into a charter party of the said ship to the said (*merchant*) for the said respective voyages, upon the terms in the same schedules mentioned, and in which said charter parties such further stipulations, provisions, and agreements, as shall be necessary and reasonable, shall from time to time be inserted. AND that the said ship shall not until she shall have performed such several voyages as aforesaid, be employed in any other service or upon any other occasion whatsoever, than in and upon the service of the said (*merchant*) without the consent in writing of him the said (*merchant*), his executors or administrators, first had and obtained. AND that during such time as the said ship shall remain in the service of the said (*merchant*) the said (*builder*), his executors, administrators, and assigns, and all and every other the owners, commanders, officers, and crew of the said ship shall and will from time to time in all things conform themselves to, and shall and will submit, obey, and conform, as well in the equipment of the said ship as otherwise, to the lawful and reasonable orders, instructions, and directions which shall from time to time be given by the said (*merchant*), his heirs or administrators. PROVIDED always, that in case of breach of these covenants and agreements aforesaid, or any of them, by or on the part of the said (*builder*), or of any of the terms, stipulations, or agreements contained in or arising out of all, any, or either of the several schedules hereunto annexed, it shall be lawful to and for the said (*merchant*), his executors or administrators, to reject the said ship wholly from his service or employ, and also to recover a satisfaction for the damages occasioned by any such breach of covenant and the penalty of any obligation entered into for the due performance of this covenant, or to seek any other such remedies as he or they shall see fit, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. IN WITNESS, &c.

Will enter into a charter party.

Ship not to be otherwise employed.

Owner, &c. will conform to directions of merchant.

On breach of this agreement, merchant may refuse the ship.

THE SCHEDULES

REFERRED TO IN THE ABOVE AGREEMENT MAY BE DIVIDED INTO,

1. The dimensions and scantlings of the ship.
2. The inventory of stores.
3. The charter party.

No. XVII.

An Agreement To Charge (1) *Lands with the Payment of a Debt previously owing.*

ARTICLES of Agreement made this day of in the year of our Lord, 18 , BETWEEN the (*debtor*) of, &c. of the one part, and the (*creditor*) of, &c. of the other part. WHEREAS the said (*debtor*) is indebted to the said (*creditor*) in the sum of £ upon the note of hand, or bond (*as the case may be*), of him the said (*debtor*), as he the said (*debtor*) doth hereby acknowledge. AND whereas the said (*debtor*), at the request of the said (*creditor*), has consented to secure the same upon the real estates of the said (*debtor*) hereinafter mentioned. NOW WITNESS THESE PRESENTS, that the said (*debtor*) hath agreed, and by these presents doth for himself, his heirs and assigns, covenant, agree, and declare, to and with the said (*creditor*), his executors, administrators, and assigns, that he the said (*debtor*), his heirs or assigns, shall and will, as soon as conveniently can or may be hereafter, well and effectually secure, at the costs of him the said (*debtor*), his heirs or assigns, the payment of the said sum of £ on or before the day of together with interest for the same, after the rate of per cent. per annum; and in the mean time, by charging the same upon all that and those his messuage or messuages, lands, tenements and hereditaments, situated at in the county of and known by the name of and for that purpose shall and will make, do, and execute every such deed, or other assurance, or act, or deed, which the counsel in law of the said (*creditor*), his executors, administrators, or assigns, shall deem necessary or proper. AND these presents further witness, that the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby declare and agree with and to the said (*creditor*), his executors, admi-

WITNESS. Agreement to charge debt upon lands.

And will execute proper assurances.

Debt to be a charge in the mean time.

(1) See other charges upon lands, &c. post Title "CHARGE."

AGREEMENTS.
Charge.

nistrators, and assigns, that the same messuages, lands, and hereditaments, shall in the mean time, and until such conveyance or assurance, be or be considered chargeable with the payment of the said sum of £ and interest, after the rate aforesaid, in as forceable and effectual a manner as the rules of law or equity will permit. IN WITNESS, &c.

No. XVIII.

An Agreement by a Person entering into Co-partnership, to Charge *upon his Share of the Business a Sum borrowed by him to make up his Proportion of Capital.*

Variations where the party is already in the firm, and the sum borrowed is for an increase of capital; also where lent by a co-partner.

ARTICLES of agreement made the day of in the year , BETWEEN (*one intended co-partner or an actual partner*) of &c., of the first part (*and the other intended or actual partner*) of &c. (*co-partners, or intended co-partners in trade*), of the second part, and if the lender be not a co-partner (*the lender*) of, &c. of the third part. WHEREAS (1) the said (1*st party*), and (2*d party*), have agreed to enter into copartnership (2) together, in the business of and to bring in respectively the sum of

Parties.

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(1) If the money is borrowed by a partner for an increase of capital, recite shortly the deed of Co-partnership.

Increase of capital.

AND that in the said deed is contained a covenant, that the said parties should respectively bring in a further or additional sum of £ at the end of years from the date thereof, or sooner, if the said business should, in the opinion of either of the parties, require the same, in augmentation of their capital; that the said business hath greatly increased, and might, it is apprehended, be still further extended, if the further sum of £ was employed therein; that the said (1*st party*) is ready to pay his proportion thereof, but the other of them not having his proportion thereof at command, the said (2*d party*) hath agreed to lend him the sum of £ for that purpose, on having the same charged upon his share of the said business, in the manner hereinafter expressed.

(2) If the sum be lent by a co-partner in augmentation of capital, recite, that part of the co-partnership deed which declares that if either of the parties advance a further sum to the business, it shall be a charge, &c. (See *ante*, MOD. PREC. Vol. VII. p. 231.)

Sum lent by co-partner.

AGREEMENTS.
Charge.

£ in formation of a capital sum of £ for carrying on the same; and whereas the said (*2d party*) not having so much at present at his command, the said (*lender*) hath with the privity and consent of the said (*1st party*) agreed to advance the sum of £ to enable him to make up his proportion of the said capital, on having the same charged upon his share of his said business, in the manner hereinafter expressed. NOW THEREFORE WITNESS THESE PRESENTS, that in consideration of the said sum of £ to be well and truly advanced by the said (*lender*) to such person or persons as they the said (*1st and 2d parties*) shall require, on or before the day of now next ensuing (1), in case the said intended co-partnership shall then have been formed, they the said parties hereto of the 1st and 2d parts respectively, do hereby covenant and agree that the said sum of £ when so advanced, together with interest for the same, after the rate of £5 per centum per annum, shall be a charge and lien upon the share or proportion of him the said (*2d party*) in the said business, so to be carried on by them as aforesaid (2) but so and in such manner nevertheless, that the same shall as between the said parties hereto, of the 1st and 2d parts, be considered as the proper money and part of the capital of him the said (*2d party*) and not of him the said (*lender*), to any participation of profit or loss in the said business, as a co-partner therein. AND for better securing the said sum, and for the satisfaction of the said (*3d party*),

WITNESS.
Party agrees to lend.

The money lent to be a charge on borrower's share.

Increase of capital.

(1) If the sum be advanced in increase of the capital of a subsisting co-partnership, say,

"Well and truly paid by the said (*lender*) unto the banking-house of &c. (*or as the case may be*) to the account of and to the use of the said (*co-partners*), the receipt whereof they do hereby respectively acknowledge. They the said do, &c. (*as above.*)

Sum lent by a co-partner.

(2) If the sum be lent by a co-partner in augmentation of capital, say,

"Shall and it is hereby declared to be a charge or lien upon the share of him the said (*2d party*) in such manner, and carry interest after such rate, and subject to such stipulations, as in the said co-partnership deed is declared, as to or in respect of any further sum to be advanced and paid by either of the parties (with the consent of the other partner) into the said business, in or for an increase or augmentation of the capital thereof.

AGREEMENTS.

Charge.

they the said parties hereto, of the 1st and 2d part, for themselves, jointly and severally, and for their several and respective executors, and administrators, do hereby covenant, promise, and agree with and to the said (*3d party*), his executors, administrators, and assigns, in the manner following; (that is to say) that they the said (*1st and 2d parties*) shall not, nor will, carry on in co-partnership any trade or business, other than the said business of so long as the said sum of shall remain a charge upon the said business, without the consent, in writing, of the said (*3d party*). AND that the clear and net estate and effects of the said co-partnership, or joint trade, after discharging the several debts owing by the said partners in respect thereof (1), shall at no time be less than the full sum or value of £ . AND also that they the said (*1st and 2d parties*) shall and will, from time to time, during the continuance of the said co-partnership, permit and suffer the said (*3d party*) or behalf of the said (*2d party*), his executors and administrators, to have free ingress and regress, at all seasonable times, in, to, and from the counting-house, warehouses, and other places wherein the said co-partnership business shall for the time being be carried on, and to have free access to and examine all and every the books of account thereof, at all seasonable times, in the presence of either of the said parties hereto of the 1st and 2d parts; and to inspect into the circumstances of the said partnership concerns, so far as to enable him to judge of the state and prosperity thereof. AND that he the said (*2d party*) shall and will, from time to time, permit and suffer so much and such part of the annual, or other sum, which he shall be empowered to take to his own use, out of the profits of the said co-partnership, as shall be sufficient to pay the interest of the said sum of £ or so much thereof as for the time being shall be a charge upon the share of him the said (*2d party*) therein, to remain in the hands of the said (*1st party*) who shall and will, immediately thereafter, well and truly pay or cause to be paid the same unto the said (*3d party*), his executors or administrators; and the said (*2d party*) doth hereby agree and declare, that the receipt of him the said (*3d party*), shall at all times be a good and sufficient discharge to the said (*1st party*) for so much thereof as shall then be acknowledged to have been received. AND also that he the said

Copartners will not carry on other trades.

Effects shall continue of a certain value.

Lender to inspect books.

Borrower's share to be subject to interest.

Receipt of lender to be a discharge for interest.

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(1) If the copartnership be already formed, say,

"Doth in the form of the execution of these presents, amount to the full sum of £ ."

AEMENTS.

Charge.

(2*d party*) shall not, nor will, at any time or times, so long as the said sum, or any part thereof, shall remain and be a charge upon his said share in the said business, take or appropriate to his own private use, out of the said partnership stock or profits, any greater or further sum than the said annual, or other sum, which he shall for the time being be entitled to receive thereon, nor shall, nor will, he the said (1*st party*) during such time as aforesaid, voluntarily pay unto the said (2*d party*) or permit or consent to his taking or appropriating any greater or further sum than aforesaid, without the leave and consent of the said (3*d party*), his executors and administrators in writing first had and obtained for that purpose. AND

'ovenant to re- / the money rowed.

the said (2*d party*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and declare, to and with the said (3*d party*), his executors, administrators, and assigns, that he the said (2*d party*), his executors or administrators, shall and will, at any time after the expiration of years from the date hereof, when thereunto required by the said (3*d party*), his executors or administrators, and upon having six calendar months' previous notice thereof in writing under his or their hand or respective hands, well and truly pay, or cause to be paid, unto him the said (3*d party*), his executors, administrators, or assigns, the said sum of £ together with interest thereupon, after the rate of per centum per annum, and also shall and will in the mean time from henceforth until payment of the said sum, well and truly pay, or cause to be paid, interest for the same, after the rate aforesaid, by equal half-yearly payments, on the day of and the day of in every year. IN WITNESS, &c.

No. XIX.

Memorandum of an Agreement for a Charter Party *between a Master or Owner of a Vessel and a Merchant* (1).

MEMORANDUM FOR CHARTER.

London (*or other place*), day of
18

IT is this day mutually agreed BETWEEN (*the master or owner*), master of the good ship or vessel called the (*British built*) (2), of the burthen of tons or thereabouts, now lying in the port of and the (*merchant*) of, &c. merchant, that the said vessel being tight, staunch, strong, and every way fitted for the voyage, shall with all convenient speed sail and proceed to , or so near thereto as she can safely get, for the purpose of loading from the factors of the said merchant a full and complete cargo of , which the said merchant binds himself to furnish and bring alongside the said vessel there, and the said master shall there load and stow on board the said vessel such goods

Agreement for seaworthiness of ship.

Furnishing and cargo.

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(1) This form may in general be had, printed in blank, at all maritime places; but as it occupies but little space, it has been thought right to insert it here, lest by accident it might not be obtainable when required.

Colonial ships.

(2) The Act of 12 Car. 2. c. 18. s. 1. (usually called the Navigation Act, and sometimes the Maritime Magna-charta, on account of the practical wisdom and the theoretical profundity of its enactments), requires all traders with our colonies to be in ships British built, and of which the master and at least three-fourths of the mariners shall be English; not only on the first sailing but (by 34 Geo. 3. c. 68.) during the whole voyage, unless in case of their incapacity by sickness, &c.

Coasting vessels.

By 34 Geo. III. c. 68. (extended to Ireland by 42 ib. c. 61.) made for increasing the number of British mariners, every coasting vessel (*i. e.* vessels trading with any part of Great Britain, or Guernsey, Jersey, Alderney, Sark or Man Islands) shall be registered as British-built, and wholly manned with and navigated by master and mariners of British subjects, except fishing vessels by allowance of the Commissioners of Customs.

Ship.

By the before mentioned Act of 12 Car. 2. s. 6. it is requisite that every owner or part owner of a ship should be a subject of the United Kingdom, unless he be denizened or naturalized.

AGREEMENTS.

Charter-party.

Carriage and delivery thereof.

or so much thereof as she shall be able reasonably to carry, over and above her tackle, apparel, provisions, and furniture; and the said vessel being so loaded with the said goods, the said master shall with all convenient speed proceed therewith to the port of or as near thereunto as she can safely get, and there make right and true delivery of the same to the correspondents, agents, or assigns of the said merchant (the acts of God or the King's enemies, detentions and restraints of kings, princes, rulers and republics, fire, the damage and accident of the seas, rivers, and navigation, and all and every other unavoidable dangers and accidents always excepted (1)),

Exemptions.

Freight and demurrage.

on being paid for freight the sum of £ ; the freight to be paid on unloading and right delivery of the cargo; the said merchant to be allowed lay or running days (if the ship be not sooner dispatched) for loading the said cargo at and for unloading the same at , and to detain the ship days on demurrage over and above her lay days, at the rate of per day, and pilotage and port charges to be paid whether the whole or part cargo delivered (2).

Penalty.

The penalty for non-performance of this agreement on either side to be £

A. B. (*Master* or *Owner*).
C. D. (*Merchant*).

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(1) Although agents are not answerable for unavoidable accidents, unless under a general covenant for performance, yet it is proper in all cases to guard against their liability, lest any clause in the contract between the parties should be construed to be a guarantee contrary to the intent of the parties, the exception therefore is always inserted in charter-parties, and protects the party from the effects of storms, tempests, contrary winds, the superior force of an enemy, &c., but so far only as the loss sustained could not have been prevented by due care and proper conduct on the part of the master and his crew. 1 Dow, 336. 12 East 381. See 3 Chitty 432. "AVERAGE."

Charterparty.

(2) Where an agreement is entered into in a charter party to pay certain pilotage and port charges for an entire voyage, the whole of such charges must be paid, although a part only of the cargo be delivered, no appointment being admitted. Christy v Rowe. 1 Taunt. 300.

No. XX.

*An Agreement by a Merchant or Tradesman with a Person as a Managing Clerk.

ARTICLES of agreement indented, made, and concluded upon this day of , in the year 18 , BETWEEN the (*principal*) of, &c. of the one part, and the (*clerk*) of, &c. of the other part: Whereas the said (*principal*) hath agreed with the said (*clerk*) to take him the said (*clerk*) as his clerk, for the managing, superintending, and conducting the said trade or business of , in which the said (*principal*) engages at the time, and on the terms hereafter mentioned. NOW THESE PRESENTS WITNESS, that in consideration of the covenants hereafter contained on the part of the said (*principal*), he the said (*clerk*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*principal*), his executors, administrators, and assigns, in the manner following; that is to say, that he the said (*clerk*) shall and will henceforth, for and during the term of years, to be computed from the day of the date of these presents, become and continue the clerk of him the said (*principal*) in the aforesaid trade or business of ; AND shall and will give his whole time and attention to the said trade or business, and in the managing, conducting, superintending, and improving the same, to the utmost of his power and ability; AND also shall and will do and perform all such services, acts, matters, and things as he the said (*principal*) shall from time to time order, direct, or appoint, and shall not, nor will at any time or times hereafter, without the consent in writing of the said (*principal*), his executors or administrators, divulge or make known any of the trusts, secrets, accounts, or dealings of or relating to the said trade or business of him the said (*principal*): AND also, that he the said (*clerk*) shall and will be just and faithful to him the said (*principal*) in all his business, dealings, and transactions whatsoever, and shall and will give and render to the said (*principal*) a just and true account of the same at all times when the same shall be required of him: AND also provide and keep such and so many books

WITNESS.

Agreement to become clerk.

Will be faithful, &c.

to keep and render accounts.

AGREEMENTS.
Clerk.

of account as shall be necessary, wherein he shall fairly write or cause to be written, all monies received and paid, and all goods which shall be bought or received in, or sold or delivered out upon credit or otherwise, and the rates and prices at which the same shall be bought or received in, or sold or delivered out, and all other matters, circumstances, and things necessary to manifest the state and condition of the said trade, which said book or books of account shall always be kept in some convenient place on the premises where the said trade shall from time to time be carried on, and be at all times open to the inspection of the said (*principal*). AND these presents further witness, that in consideration of the covenants hereinafter contained on the part of the said (*clerk*), he the said (*principal*), for himself, his heirs, executors, and adminstrators, doth hereby covenant, promise, and agree with and to the said (*clerk*), his executors and administrators, that he the said (*principal*) shall and will yearly and every year during the said term, the said (*clerk*) well and truly performing, fulfilling, and keeping all and singular the covenants and agreements herein-before contained on his part, well and truly pay or cause to be paid unto the said (*clerk*) by half-yearly payments, on the day of , and the day of , in every year, by equal portions, the clear yearly sum of £ of lawful and current English money, without any deduction whatsoever, the first half-yearly payment thereof to be made on the day of next ensuing the date of these presents; and also shall and will yearly and every year, on the day of , well and truly pay or cause to be paid unto the said (*clerk*) over and above the said yearly sum of £ , so much money as will amount or be equivalent to one fourth part of the gross proceeds of or to arise from the said trade or business without regard to interest upon capital, rent, taxes, repairs, wages, or other expenses or out-goings whatsoever, or any bad or doubtful debts (1). AND also a proportionable part of the said yearly payments from the last of such respective days of payment next preceding the decease of the party so dying, up to the day or time of his decease. Provided always, and it is hereby agreed and declared between and by the parties hereto, that in case of the decease of either

Salary.

And allowance in proportion to proceeds.

Proviso for determining the agreement.

Gross proceeds.

(1) If any remuneration is given to a clerk beyond his salary, and in proportion to the increase of the trade, which is frequently done as a stimulant to his exertions, it should be in respect of the *gross*, and not the *net* proceeds; for it has been conceived that his being liable to losses or outgoings (which in the latter case he would in effect be), would make him a co-partner. See Dry v. Boswell, 1 Campb. 330. and see also 17 Ves. 404.

AGREEMENTS.

Clerk.

of them the said parties before the expiration of the said term of years, or in case the said (*principal*) shall be desirous at any time during the term aforesaid, to determine these presents, it shall and may be lawful for him so to do, on giving to the said (*clerk*), calendar months' notice thereof in writing, and paying to him the said (*clerk*), the sum of £ of lawful English money, and also a proportionable part of the said yearly payment herein-before agreed to be paid to him as aforesaid, up to the time of the expiration of the said notice, and then and thereafter these presents and every thing herein contained shall cease, determine, and be absolutely void, but without prejudice to any right of action, claim, or demand in or by either of them the said parties for or by reason of any previous breach or non-performance by the other of the said parties of any of the covenants or agreements herein contained. IN WITNESS, &c.

No. XXI.

*An Agreement between a Merchant, or Tradesman, and a Clerk as Book-keeper *and* Accountant.

ARTICLES of agreement, indented, made, and concluded, this day of in the year of our Lord 18 , BETWEEN (*the principal*), of, &c. merchant, of the one part, and (*clerk*), of, &c. of the other part: whereas the said (*principal*) has engaged with the said (*clerk*), to take him as a clerk or book-keeper in his trade or business of

WITNESS. NOW THESE PRESENTS WITNESS, that the said (*clerk*), for the consideration hereinafter mentioned, doth hereby, for himself, his executors, and administrators, covenant, promise, and agree to and with the said (*principal*), his executors and administrators, that he the said (*clerk*), shall and will, during the term of years, to commence from the day of the date hereof, reside and continue with the said (*principal*), and diligently and faithfully serve him as clerk and book-keeper of him the said (*principal*,) and in such other his lawful employment, business, and affairs, and shall from time to time, and at all times, be faithful to and observe, perform, and fulfil the lawful and reasonable commands and directions of the said (*principal*), without disclosing the same, or the secrets of his employment, business, or dealings, to any person or persons whatsoever.

Clerk will keep accounts. AND the said (*clerk*), shall and will, from time to time, upon request, make and give unto the said (*principal*), his executors and administrators, a full, true, just, and perfect account and reckoning in writing of and for all money which he shall receive in or pay out, and of all goods and commodities which he shall at any time receive in or deliver out, upon the account and for the use of the said (*principal*), or by his order or direction; and

And be faithful. shall and will well and truly pay, or cause to be paid unto the said (*principal*), his executors or administrators, all such sum and sums of money, as shall appear to be due upon the foot of every such account or accounts. AND also that he the said (*clerk*), shall not nor will, at any time or times during the said term, trust or deliver upon credit, any of the monies, goods, wares, and merchandizes of the said (*principal*), or any of his correspondents, to any person or persons whatsoever, without the special license and consent of him the said (*principal*).

Principal will pay salary. AND the said (*principal*), doth for himself, his

executors and administrators, covenant, promise, and agree to and with the said (*clerk*), his executors and administrators, that he the said (*principal*), shall and will, in consideration of the said services so to be done and performed by him the said (*clerk*), as aforesaid, pay or allow, or cause to be paid or allowed, unto him the said (*clerk*), the yearly sum of £ of lawful current money of England, by quarterly payments on the day of , the day of , the day of and the day of in each year, and also provide and find him, during the said term, with good and sufficient meat, drink, lodging and washing (1). IN WITNESS, &c.

(1) A clause for vacating the contract may be added if so agreed. See *ante*, p. 96.

No. XXII.

**An Agreement to set up and work a* Stage Coach *by Joint Proprietors* (1).

ARTICLES of agreement, indented, made the day of in the year of our Lord 18 , BETWEEN A. B. of &c., and C. D. of &c., inn-keepers, being subscribers and proprietors of or to a plan or undertaking for working a stage-coach or vehicle hereinafter mentioned, of the first part; C. D., and E. F. of &c. other subscribers to the said plan or undertaking, of the second part; and the several other persons, whose names and seals respectively are hereunto subscribed and set as subscribers also thereto, of the third part. WHEREAS it is conceived and shewn by the said A.B. and C. D., at a meeting of the parties hereto, and others holden on the subject hereof, that it would be a great accommodation and convenience to the public if a coach were to be daily worked and run from the city of in the county of to the town of in the county of and that considerable emolument would be derived therefrom to the several contributors to such an undertaking. AND whereas the said E. F., E. H., and other the persons whose respective names and seals are hereto subscribed and affixed, have agreed to commence and become subscribers to the same, in the shares and proportions set opposite to their respective names, in the schedule hereinunder written or hereunto annexed; and the said A. B. and C. D. have proposed to become the principal managers of the said concern, and to use their best endeavours to promote the prosperity thereof, to the best of their power, subject to and under the

Recitals.

(1) An agreement of this kind will in effect be a co-partnership, and various clauses, according, probably, with the intention of the parties, may be found in Vol. VI. Prec. No. VI. p. 121. *et seq.* and No. VIII. p. 158. *et seq.* See also a similar agreement, with somewhat different provisions to the above, in 1 High. Prec. 136; a collection which, although necessarily deficient in variety, by reason of its smallness, is well adapted for the ordinary use of solicitors, and more correct than any other publication of the like kind.

terms, conditions, regulations, and agreements hereinafter contained. AGREEMENTS.

Coach.

Now WITNESS THESE PRESENTS, that it has been, and is hereby agreed, by and between the several parties hereto, that they the said parties shall and will jointly set up, start, and support a stage-coach or vehicle for passengers, to run from to aforesaid, and so in return from to aforesaid, when and subject to the several terms, conditions, and regulations hereinafter contained (that is to say): that they the said (*innkeepers*), as acting and conducting managers of the said concern, shall and will as soon as may be hereafter during the subsistence of these presents, for and on behalf, and at the equal expences of themselves and others the parties hereto, in the proportions hereinafter mentioned, find and provide two substantial and newly-built stage-coaches, to be constructed, painted, varnished, lined, and furnished in a proper, complete, and workmanlike manner in all respects, to hold and be adapted to the accommodation of inside and outside passengers, and with iron rails or bars, straps and other convenience for a proportionate quantity of luggage, and to cause the said coaches and the drivers thereof, to be duly entered at the proper offices of entrance (1). AND it is hereby agreed, that one of the said coaches shall be started from the sign of the at aforesaid, on the day of now next ensuing, at the hour of in the morning,

WITNESS.

Managing proprietors will provide coaches, &c.

Two coaches to be provided.

Coaches to be entered.

Place and time of starting.

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(1) If the coaches are to be provided by a coachmaker (party to the concern) on hire, add, Coachmaker.

"And also that he the said (*coach-maker*) shall and will be answerable for all repairs and every other necessary for the travelling and use thereof, for the daily price or sum of per mile for each of the said coaches, to be paid to him by the said parties hereto, of the first and second party in the manner hereinafter provided; and that he the said (*coach-maker*) shall and will at his own like costs and charges do and perform all such repairs, cleansing, greasing of wheels and amendments consequent to the wear and tear thereof, as and when the same shall be requisite, and shall cause the same coaches to be painted and varnished in a workmanlike manner, with the proper names of the proprietors thereon once in every months, and, in case of any accident happening thereto, shall and will forthwith repair the same, and in the meantime provide another coach or coaches in lieu thereof, and so and in like manner provide such proper, fit, and complete coaches once in every years."

AGREEMENTS.
Coach.

and run from thence daily at the same hour to the sign of the aforesaid. AND that the other of the said coaches shall be started on the same day and hour from the sign of the at aforesaid, and run from thence daily to the at . THAT the said parties hereto of the 1st and 2d parts shall respectively charge and take from the several passengers the respective fares or sums mentioned in the schedule hereunder written, marked (A). THAT proper books shall be kept by them the said last mentioned parties respectively, and deposited in their said offices, wherein shall be entered the names of all passengers, their distances of travelling, and sums by them respectively paid and to be paid, and also the direction of every parcel taken in and to be carried by either of the said coaches; AND that daily way-bills shall be correctly copied from the said books, and be respectively signed by them or some other person duly authorized so to do, and by him or them delivered to the respective drivers of the said coaches, to be by them respectively taken and delivered together with the sums therein inserted as received for passage and parcel money, to the said parties hereto of the 1st and 2d parts upon the arrival of the said coaches at and respectively, which said way-bills shall be filed in their respective offices, and there preserved, together with the said books of entry, for the inspection of any or either of the proprietors or shareholders in the concern. THAT the said proprietors shall and will, at their own respective costs and charges, provide and maintain for each of the aforesaid coaches able, active, and seasoned horses, in good health and condition, for every stage of the said journey or distance, and properly harnessed and caparisoned, and which shall be ready daily and nightly for starting at and for the respective stages or places and at the hours respectively stated in the schedule hereunder written; and also do and shall provide sober, well-skilled, and careful drivers, and also nightly guards (with proper and sufficient sureties for good conduct and behaviour), and who shall jointly take the charge, care, and management of the said horses, coaches, luggage, parcels, packages, and way-bills, and proceed therewith to the end of their own particular stage, and then and there deliver up the same, and pay over the monies which he shall respectively have received (except by way of gratuity from passengers) to the party contracting for or bound to work the next succeeding stage, or to the coachman or driver of such stage, or to the book-keeper at and respectively, or unto some or one of them: AND every of the proprietors shall and will bear and pay all charges of turnpikes, baits and

Fares to be taken.

Entry books to be kept.

And way-bills.

Each proprietor to find horses,

and coachmen for his own stages.

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outgoings for their said respective stages. THAT in case any stage shall be stopped or impeded by death, illness, or accident happening or occurring to any drivers, guards, horses, or coach, the party or parties upon whose stage the same shall happen, shall and will forthwith and immediately on notice thereof, at his or their own proper costs and charges (but so far as respects the coach for and to the account of the concern) furnish and provide another driver or drivers, guard or guards, horse or horses, and cause to be repaired the said coach, as the case or cases may require, and proceed with and convey forward the said coach or coaches for the remainder of his or their respective stages. THAT all general and casual losses, costs, charges, and expenses attending the said concern, or which may happen thereto, whether by accident (except as hereinafter is mentioned), law-suits, solicitors, or councils, charges for advice or directions, or otherwise howsoever, not solely relating to or concerning one or more proprietor or proprietors only in particular and individually, shall be borne, sustained, and paid by all and every the said proprietors, according and in proportion to their respective shares and interests in the profits and proceeds of or in the said concern. THAT a good and true time-piece shall be furnished and kept by the guard for each of the coaches, and by which the time of starting from and arriving at each stage shall be regulated and reckoned, and a time-bill conformably thereto shall be made out by the several book-keepers at the different stages, to accompany the said way-bills, and whereupon the time of the startings from and arrivals at each of the said stages shall be marked by the party or his book-keeper at the beginning and end of every stage, with the initials of the name of the party or parties to whom such stage may belong. THAT every stage of the said journey from to , and back from to shall be completed in the time mentioned in the said schedule under written; and that the party or parties contracting for each stage, his or their driver or drivers, shall respectively forfeit and pay to the book-keeper of the next succeeding stage, for the use and benefit of the concern in general, the sum of 1*s.* for every minute of time which shall elapse after the expiration of five minutes over the time prescribed in the said schedule for his starting and arrival respectively (unavoidable accidents to the said coaches or horses, and floods, storms, and tempests, always excepted). THAT each of the said parties to these presents shall and may at all times (provided there be sufficient room for all the passengers, but not otherwise), have free carriage within or on the outside of the said coaches for themselves and their respective families, and also for any parcel or luggage to or from any

Accidents, &c. to be made good by proprietors.

Losses to be equally borne.

Time-pieces to be kept.

Forfeiture on failure to time.

Proprietors to have free carriage.

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or either of the stages or places to or through which the same may run, and the respective book-keepers and drivers shall admit them accordingly upon the way-bills, free of all charges whatsoever, for themselves and their luggage, so that the said luggage do not exceed lbs. weight. THAT the sums paid for the booking of parcels at and shall be received and retained by the said parties hereto of the first and second parts respectively for their own use, and be considered as a recompence and remuneration for the booking by them of passengers. THAT all accounts containing the particulars of all receipts, payments and expenses relative to the said concern shall be fairly entered in proper books to be kept for that purpose by the said parties hereto of the first and second parts at the end of every calendar month, and a summary or balance sheet thereof be fairly made and written for the inspection of the several proprietors. THAT on the last day of every month, unless the same be on a Sunday, and then on the Monday following, a meeting of the said proprietors shall be held at the inn aforesaid, when and where all books of entry and of account, and all way-bills, letters, papers, and writings, and other matters, particulars, and things in any wise relative to the said concern, or tending to elucidate the state thereof, shall be laid before them by the said parties of the first and second parts, and all monies then appearing to be in their or either of their hands respectively, shall, after deducting all costs, charges, and expenses by them respectively incurred, and by them paid on account of the said concern, the balance or residue thereof shall be paid and divided unto and between the several and respective parties hereto, at and after the rate of *d.* for every mile which their respective horses shall have drawn or run the said coaches. THAT each of the said coaches as to inside and outside passengers, luggage, plates, paintings and other requisites imposed by any Act of Parliament in force for the time being, shall in all things be strictly observed and obeyed by the several proprietors respectively, and their respective drivers and servants (1). THAT if any question or difference relative to or affecting the management of the said concern or the interest of the proprietors therein, shall arise or be proposed for discussion at any meeting of proprietors duly convoked or held, the same shall be decided by a majority of the parties then present by shew of hands, and, in case of an equality of votes upon any such question or difference, the chairman of the said meeting shall have a casting

Amount of parcel-booking to be retained by first parties.

Accounts to be kept and made up monthly.

Monthly meetings to be held.

Differences to be decided by majority.

(1) See the regulations of 50 Geo. III. c. 48. and 3 Geo. IV. c. 95. relative to stage coaches.

vote, and which decision shall be binding upon all parties interested therein, whether present at such meeting or not, until the then next meeting of proprietors, when the same may be again the subject of consideration, and confirmed or annulled. THAT each of the parties hereto shall be at liberty at any time to withdraw from the concern, upon giving to the said parties of the first and second parts, or either of them, twenty-eight days' previous notice thereof, in writing of such his or their intention, and specifying the name and description of some fit and competent person or persons, who will, and is or are prepared to take upon himself or themselves, the duty, liability, risk, and expense, of the party or parties who shall so be desirous to withdraw from the said concern. AND that upon receipt of every such notice by either the said parties hereto of the first and second parts, he shall forthwith summon a meeting of all the then proprietors, to be held at the sign of the , at aforesaid, within days next thereafter for the consideration of such notice and of the fitness of the person or persons therein proposed to be admitted into the said concern; and in case he or they shall be approved, then the said parties hereto of the first and second parts, or one of them, shall make up, settle and adjust all accounts then subsisting with the party or parties so withdrawing, and shall demand and receive, or pay from or to him or them all such balance as shall thereby appear to be due and owing to or from him or them, and to give such receipts and releases as the case may require upon the said party or parties so withdrawing; giving to them the said parties proper security and indemnity against any costs of any action, suit or defence, or cause of action, suit or defence, which may then be subsisting or have arisen relative to the said concern. THAT upon the admission of any new party or parties into the said concern, he or they shall sign an indorsement to be made hereon testifying his assent to the terms and conditions hereof, and obliging him, his executors and administrators, to stand in the place of the party so withdrawing, and to abide by the said terms and conditions in all respects, as to, for, in, and concerning his share, liability, duty, risk, and benefit in the said concern. PROVIDED always, and it is hereby lastly declared and agreed, that if it should at any time appear to the several proprietors or any two of them, they or any of them, necessary or advisable to call a meeting of proprietors at the or inn aforesaid, by 14 days' previous notice, at which meeting the major part of proprietors present (of whom the largest proprietor in case of an equality of votes, and if there be no largest proprietor, then the chairman, shall have a casting vote), shall be competent and have authority to put an end to and dissolve the same

[redacted]
Coach.

Parties may withdraw on notice.

Admission of new proprietors.

Dissolution of the concern.

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by giving public notice thereof by advertisement in the London Gazette, or any daily newspaper published in either of the counties of and , whereupon the same shall be dissolved and put an end to accordingly, and all accounts, matters, transactions, and things then subsisting between the said parties, by virtue of these presents, or relative to the concern, shall be forthwith made up, adjusted and settled, according to the resolutions or agreements which at such meeting shall or may be passed or entered into concerning the same, and the balance thereof divided and paid between or to the several proprietors (whether profit or loss) in or according to their shares and proportions in the said concern; and such mutual receipts, and releases, and indemnities shall be executed and given them respectively, as the case or cases shall require. AND for the punctual performance of the several articles and agreements hereinbefore contained, and specified in the schedule hereunder written, by the respective parties hereto, each of them the said parties for himself, his executors, administrators, and assigns, doth hereby bind himself and them unto the other and others of them respectively, his and their respective executors, administrators, and assigns, in the penal sum of £ (1) IN WITNESS, &c.

Penalty.

THE SCHEDULE, OR TABLE

ABOVE REFERRED TO.

Names of Proprietors.	Stage he works.	Time of starting.	Time of arrival.	Number of Miles.		

(1) See as to penal sums, *ante*, p. 65, 70.

No. XXIII.

An Agreement with a Coachmaker *for the Hire of a Chariot, and keeping it in Repair.*

Variations where it is with a Stable-keeper for the Hire of a pair of Horses.

ARTICLES of agreement made the day of in the year

BETWEEN (*a coachmaker*) of, &c., [*or* a stable-keeper] of, &c., of the one part, and (*employer*) of, &c., of the other part.

WHEREAS the said (*employer*) has agreed with the said (*coachmaker*) for the hire of a chariot and harness [*or* (*stable-keeper*) for the hire of a pair of horses and driver] after the rate, and upon other the terms and conditions hereinafter mentioned: NOW THESE PRESENTS WITNESS, that the said (*coachmaker*) doth hereby covenant and agree with the said (*employer*), that he the said (*coachmaker*), his executors or administrators, shall and will at his or their own expence on or before the day of next, provide (1) [a new well-built chariot with a good hammercloth and harness, for one pair of horses, and other proper accoutrements, to the reasonable good liking of the said (*employer*), to be at all times for the use and at the command of the said (*employer*), his family and friends, for the term or period of determinable nevertheless as hereinafter mentioned) after the rate of for each (*month*). AND that he the said (*coachmaker*), his executors and administrators, shall and will at his and their own proper charge, from time to time, and at all times, maintain, amend, and keep the said chariot, harness and accoutrements, in good and

WITNESS. Coachman covenants to provide chariot, &c.

(1) If the agreement be with a stable-keeper for the hire of a pair of horses, say (instead of what follows in brackets), Horses.

"Two good, strong, gentle, and active horses, well paired or matched, and a good, skilful and civil driver, to the reasonable good liking of the said (*employer*), and in case the said horses or driver, or either of them, shall at any time be ill, out of health, or disabled, shall and will forthwith provide another or other like horses or driver respectively as aforesaid, and so as often as any such case may happen or occasion shall require.

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proper order, repair, and condition, (save only with respect to any sashes or glass which may be accidentally or otherwise broken by the said (*employer*), his family or friends,) and repair or mend any damage which may happen to the said chariot, by being overturned, or other violence or accident, and make good any thing belonging thereto which may happen to be lost or stolen therefrom at any time whilst under the care of the said (*coachmaker*) or his servants, except the same happen or be occasioned by or through the default of the said (*employer*) or his servants, and except during the time the said chariot or harness shall be on the premises, or in the custody of the said (*employer*).] AND in consideration of the premises aforesaid, the said (*employer*) doth hereby covenant and agree with the said (*coachmaker*), that he the said (*employer*), his executors or administrators, shall and will, on the day of in each during the subsistence of this agreement, well and truly pay or cause to be paid, unto the said (*coachmaker*), his executors, administrators, or assigns, the sum of £ , of lawful money of England. PROVIDED ALWAYS, that in case the said (*employer*) shall depart this life during the subsistence of these presents, the same shall be and be considered as at an end and determined on the expiration of next thereafter, upon a due proportion of the said monthly sum of £ being paid or lawfully tendered up to that time. AND, &c. (*a clause empowering either party to dissolve the agreement on notice* (1) *and for referring differences to arbitration* (2) *may here be added.*) IN WITNESS, &c.

Employer covenants to pay, &c.

Dissolution of agreement.

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(1) See *ante*, p. 26. (2) See *ante*, p. 27.

No. XXIV.

Agreement between a Vendor and Purchaser for retaining a part of the Purchase Money until a Defect *in the* Title *by reason of the Minority of one of the Vendors, or the like) be removed* (1).

ARTICLES of agreement made the day of , in the year of our Lord 18 , BETWEEN (*the vendor*) of, &c. of the one part and (*the purchaser*) of, &c. of the other part. WHEREAS by articles of agreement bearing date, &c. (*recite the articles if any, and if not recite*) WHEREAS the said (*purchaser*) hath agreed with the said (*vendor*) for the purchase of the fee simple and inheritance of, &c. (free from incumbrances) for the sum of £ AND whereas the title of the said (*vendor*) hath been objected to by the counsel of the said (*purchaser*) by reason of the same not being regularly deduced from, &c. *or* by reason that A. B. who is entitled unto one moiety to the said hereditaments is under the age of twenty-one years, *or* that the said hereditaments are chargeable with the payment of the sum of £ at a time which is not yet arrived (*or otherwise as the case may be*), but the said (*purchaser*) hath notwithstanding, agreed to accept of the same upon being permitted to retain the sum of £ , part of the purchase money, in his hands for such time and purposes, and subject to such agreements as hereinafter are mentioned concerning the same. AND whereas in pursuance of the said agreement the said hereditaments by indentures of lease and release, the lease bearing or intended to bear date the day next before the release, and the release bearing or intended to bear even date with these presents, have been conveyed to the said (*purchaser*) accordingly, upon the payment of the sum of £ only. NOW THESE PRESENTS WITNESS, that it hath been and is hereby declared and agreed by and between the said (*vendor*) and (*purchaser*) that the

WITNESS. Sum retained shall be applied, &c.

(1) For other deeds, &c. relative to purchase money either retained or invested for the purpose of indemnifying against defect of title, or against incumbrances, see *post*. "BONDS," "COVENANTS," "INDEMNITY."

Deeds of indemnity.

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said sum of £ (part of the said purchase money, or sum of £) so retained by the said (*purchaser*) as aforesaid, shall remain in the hands of him the said (*purchaser*), his executors, and administrators, (at such interest in the meantime as hereinafter is mentioned) until months after the said shall attain his age of twenty-one years, or depart this life under that age, [*or as the case may be*] (1) and then be paid unto the said (*vendor*), upon he the said (*vendor*) or his heirs, or other person or persons claiming as aforesaid, legally and effectually conveying, confirming, and assuring, the said hereditaments unto the said (*purchaser*), his heirs and assigns, or otherwise as he or they shall lawfully direct. AND the said (*purchaser*) doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said (*vendor*), his executors, administrators, and assigns, in manner following, (that is to say) that he the said (*purchaser*), his heirs, executors, administrators, or assigns shall and will well and truly pay or cause to be paid the said sum of £ so retained and remaining in his hands as aforesaid, unto the said (*vendor*), his executors, administrators, and assigns, at the time hereinbefore in that behalf mentioned, upon the said hereditaments being conveyed and assigned to him, his heirs and assigns, in the manner aforesaid. AND further that in the meantime, and until the said sum of £ shall be paid as aforesaid, he the said (*purchaser*), his heirs, executors, administrators, or assigns shall and will pay or cause to be paid unto the said (*vendor*), his executors, administrators or assigns, interest for the same, after the rate of £ per cent. per annum, by equal payments on the day of &c. in every year. PROVIDED always nevertheless, and it is hereby agreed and declared by and between the said (*vendor*) and (*purchaser*), that in case the title of the said (*vendor*) to the said hereditaments shall not be legally and effectually confirmed unto the said (*purchaser*) in pursuance and according to the true intent and meaning of the agreement hereinbefore in that behalf contained, within the space of six months next after the said (*vendor*) shall have attained his age of twenty-one years, or after his decease under that age, then and in such case and from thenceforth, the covenant and agreement hereinbefore contained on the part of the said (*purchaser*), for the payment of the said sum of £ and interest as aforesaid, shall cease, de-

Covenant by purchaser to pay the purchase money,

and interest in the mean time.

Covenant for money not to be paid if default in confirmation.

(1) If the money is retained on account of legacies or portions not yet payable or claimed upon the estate, see *post* "INDEMNITY."

termine, and be utterly void to all intents and purposes, and the said (*purchaser*), his executors and administrators, shall from thenceforth be entitled to retain and keep the said sum of £ to and for his and their own use and benefit, any thing hereinbefore or in the said in part recited indenture contained or implied, or any rule or doctrine of law or equity to the contrary, in anywise notwithstanding. IN WITNESS, &c.

AGREEMENTS.
Defect of Title.

No. XXV.

***An Agreement that no Advantage shall be taken of any Defect of Title by reason of part of the Premises being omitted out of an Assurance.**

ARTICLES of agreement indented and made, the day of in the year of our Lord 18 . BETWEEN (*the vendor or other grantor of the premises or his representatives*) of, &c., of the one part, and (*the purchaser or other grantee*) of, &c., of the other part.

Recital of defect.

WHEREAS, &c. (*recite the conveyance to the purchaser or grantee*), and that it has since been discovered that the title of the said (*grantee*) under the said indenture is defective by reason of, &c., (*recite the defect as a misdescription or omission of parcels, or otherwise, as the case may be*). AND whereas the said (*grantee*) is advised that the said (*grantor*) or his representatives may or might defeat the said conveyance if the said error or defect be not amended or remedied by some instrument under seal to operate as a conveyance, or an estoppel or otherwise, and the said (*grantor*) being desirous that the said grant and assurance may be effective according to the true intent and meaning thereof, has agreed to execute these presents by way of confirmation of the same.

WITNESS.
Agreement to do further acts to cure defect.

NOW THESE PRESENTS WITNESS, that the said (*grantor*), for himself and his heirs, doth hereby declare and agree with, and to the said (*grantee*), his heirs, executors, administrators, and assigns, that he the said (*grantor*) and his heirs, shall and will at any time or times hereafter, upon the request of the said (*grantee*), his heirs or assigns, (but at the costs and charges of him the said (*grantor*), his heirs, executors or administrators,) make, do, and execute, and consent to and concur in all such acts, matters, or things whatsoever, as by the said (*grantee*), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister), shall be advised and required for correcting and amending the said indenture and assignment, in such way and manner as that the said premises may be conveyed and pass thereby, or otherwise unto and to the use of the said (*grantee*) and his heirs, according to the true intent and meaning of the said in part recited indenture, and the parties therein.

And in the mean time assurance to be effective.

AND that in the mean time, and until the said indenture

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and assurance shall be so amended or rectified, and the said hereditaments, thereby or otherwise well vested in him the said (*grantee*) and his heirs, all and every the same hereditaments shall be and remain to, for, and upon such and the same uses, trusts, ends, intents and purposes, as if the same had been comprised and duly described therein and had passed thereby, and the rents, issues, and profits thereof be had, received, taken, retained, and enjoyed accordingly, any rule of law or equity to the contrary in any wise notwithstanding. IN WITNESS, &c.

AGREEMENTS.

Defect of Title.

No. XXVI.

* *An Agreement not to take advantage of a* Defect of Title *arising by a Misnomer in a Deed, and to execute further Assurances.*

ARTICLES of agreement indented, made the day of in the year 18 , BETWEEN (*grantor*) of, &c., of the part, and (*grantee*) of, &c., of the part, and &c., (*if any other person or necessary party*) of, &c., of the part. WHEREAS by indenture (1) &c., (*recite the deed in which the misnomer occurred, and the nature of the error, as* "that the hereditaments were expressed to be conveyed or assured to the said F. G. (2) and his heirs instead of the said H. I., contrary to the obvious and true intent and meaning of the parties thereto," *or* that the said hereditaments were in the premises of the said indenture, expressed to be conveyed and assured unto the said (R. M.) and his heirs, but in the habendum thereof the same are expressed to be had and holden unto and to the use of (W. W.), and his heirs or otherwise, *as the case was*); AND whereas the name of the said (F. G.) so used and inserted as aforesaid, was used and inserted for and instead of the name of the said (H. I.), contrary to the true intent and meaning of the said (*grantor*) and (*grantee*), as they and each of them doth hereby acknowledge and declare. NOW THESE PRESENTS WITNESS, that it is hereby declared and agreed by and between the said (*grantor*) and (*grantee*) [and (*if so*) all and every the said parties to these presents], that it was and is the true intent and meaning of them, and of the said in part recited indenture, that the grant, release, and assurance thereby expressed to be made of the

Recital of misnomer, &c.

WITNESS. Declaration of intent of parties.

Indorsement.

(1) If the agreement be intended to be indorsed on the deed, which if the agreement alone be considered sufficient to supply the defect, it may be, say, the "within written" indenture, &c.; but if a further assurance is intended to be executed in pursuance of the agreement, it will be preferable that such assurance instead of the agreement be indorsed, if of a nature to admit of an indorsement, but if not, then a memorandum of its having been executed should be indorsed. See *post.* "CONFIRMATION."

(2) In this case F. G. should be a party.

said hereditaments, to and to the use of the said (F. G.) and his heirs ought to have been, and was and were intended to have been made to and to the use of the said (H. I.) and his heirs (1). AND that the same indenture, grant, release and assurance, shall from the time of the sealing and delivery thereof, and at all times thereafter, be and enure, and be deemed, construed, and taken to be operative, and enure unto the said (H. I.) and his heirs, to and for the use and behalf of him the said (H. I.), his heirs and assigns for ever, agreeably and in conformity to the true intent and meaning of the said parties, as hereinbefore expressed concerning the same, and in the same or like manner, to all intents and purposes, as if the name of the said (H. I.) had been used and inserted therein instead of the name of him the said (F. G.), any thing in the said indenture contained, or any rule of law or equity to the contrary in any wise notwithstanding. IN WITNESS, &c.

And said Indenture shall enure accordingly.

(1) Or to the said (H. I.) his executors, administrators, and assigns, according to the nature of the property.

AGREEMENTS.

Defect of Title.

No. XXVII.

**An Agreement by a Vendor to take a Reconveyance of Premises sold, subject to a* Defect of Title, *if same not cured within a given Time.*

ARTICLES of agreement indented and entered upon the day of , in the year of our Lord 18 . BETWEEN (*the vendor*) of, &c., of the one part, and (*the purchaser*) of, &c., of the other part. WHEREAS by indentures of lease and release, the lease bearing date the day next but one before the release, and the release bearing even date herewith, and made between, &c., the said (*vendor*) in consideration of the sum of £ to be paid by the said (*purchaser*), released and conveyed a certain messuage (*or as the case was*) situated at &c., (as the same is therein particularly described), with the appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns. AND WHEREAS the title of the said (*vendor*) to the said hereditaments was considered at the time of the said conveyance to be defective, inasmuch as that, &c. (*here state the ambiguity, want of evidences, or other supposed defect in the title*). But the said (*purchaser*) nevertheless agreed to accept of a conveyance thereof upon condition that the said (*vendor*) would agree to take a reconveyance thereof at the said sum of £ in case such defect could not or should not be cured within the space of then next, and enter into such agreements and covenants in that behalf, as hereinafter are contained. NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared, between and by the parties hereto, and in particular the said (*vendor*), for himself, his heirs, executors and administrators, doth hereby covenant, promise, and agree, with and to the said (*purchaser*), his heirs and assigns, THAT in case the defect, or apparent or supposed defect of title hereinbefore stated or mentioned, shall not be cured or remedied to the reasonable satisfaction of the counsel in the law, (of the degree of a barrister) of the said (*purchaser*) or his heirs, within the term or space of to be computed from the date of the said in part recited indenture of release, and the said

Recital.

WITNESS. Agreement by vendor to accept reconveyance if defect not cured within a given time;

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(*purchaser*) or his heirs, shall upon or within the space of calendar months next thereafter, be desirous of rejecting and reconveying the messuages, &c. comprised in the said indenture, and of such his or their desire shall give unto the said (*vendor*), his heirs, executors or administrators, (*six*) calendar months previous notice in writing, by leaving the same at his or their then usual or last place of abode or residence, HE the said (*vendor*) and his heirs shall and will, at the expiration of the time in such notice to be limited, purchase and accept of a conveyance of the same messuages, &c., with the appurtenances from him the said (*purchaser*) or his heirs, at or for the aforesaid price or sum of £ , and shall and will well and truly pay or cause to be paid the same, upon a good, valid, and proper deed of conveyance, to be prepared or approved by the counsel in the law of the said (*vendor*) or his heirs, of the same messuages, &c. with the appurtenances, being delivered or tendered to him or them, or at his or their then or their last place of abode, to the use of him the said (*vendor*) and his heirs, or as he or they shall direct or appoint, free from all incumbrances (save only leases for years at rack rent, and not exceeding a term of years) made, done or committed or occasioned by him the said (*purchaser*), and without any further or other covenant to be therein contained by or on the part of the said (*purchaser*) or his heirs or assigns, than as against such incumbrances, so nevertheless that the said messuages, &c., shall then and at the time of the tender of such conveyance, be in as good a state of repair in all respects as the same now are. PROVIDED ALWAYS (1), that these presents shall not operate or have the effect of making the said recited indentures of lease and release, by any rule of law or equity, be considered, deemed, or construed to be a mortgage of the hereditaments therein comprised, or as a security for repayment of the purchase or consideration money therein mentioned, to be paid by the said (*purchaser*) to the said (*vendor*), nor to give, or be construed to give, unto the said (*vendor*), his heirs, executors, or administrators, any right, title, or equity, to redeem the said hereditaments, upon payment of the said purchase money; but simply and solely as a conveyance to be defeated by the option and election only of the said (*purchaser*) and his heirs, upon and under the terms and conditions hereinbefore expressed, and not otherwise. PROVIDED ALSO, that in case the said defect of title shall be so cured or remedied as aforesaid,

and notice being given,

and to repay the purchase money.

The conveyance not to be construed to be a mortgage.

If defect cured, or no notice.

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(1) Without this proviso, some of the incidents of a mortgage might attach upon the conveyance. *Mortgage.*

AGREEMENTS.

Defect of Title.

within or at the expiration of the said term, or period of calendar months, or before any such notice as aforesaid shall be given, or, in case no such notice shall be given, within the said term or period of , then and in either of such cases, these presents and every thing herein contained, shall cease, determine, and be void in like manner as if the same had not been made. IN WITNESS, &c.

This agreement to be void.

AGREEMENTS.
Deputy.

No. XXVIII.

An Agreement between a Register *(or other principal Officer) and his* Deputy (1) *relative to the Fees and Emoluments of the Office.*

ARTICLES of agreement indented, made this day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the principal*) of, &c. register of, &c. (*as the case may be*) of the one part, and (*the deputy*) of, &c. of the other part. WHEREAS the said (*principal*), by deed-poll or writing under his hand and seal, bearing even date with these presents, hath constituted and appointed (2) the above named (*deputy*) to be the deputy of him the said (*principal*) to execute for him the said office of register (*or as the case may be*)of the Bishop of the diocese of during the will and pleasure (*or as the case may be*) of him the said (*principal*), and thereby authorised him the said (*deputy*) to receive and take to the use of him the said (*principal*), all lawful fees, perquisites and profits belonging to the said office, and execute such other acts and things as appertain thereto, for and on the part of him the said (*principal*). NOW THESE PRESENTS WITNESS, that it hath been and is agreed by and between the said (*principal*) and (*deputy*), and the (*principal*) doth hereby for himself, his executors and administrators, grant, declare and agree with and to the said (*deputy*), his executors and administrators, that he the said (*deputy*) during the time he shall execute the said office of deputy of him the said (*principal*) shall or lawfully may retain (3) to himself out of the fees, profits, and emoluments to arise or be derived and received from the said office one full and equal part thereof (4), for the use of himself the said (*deputy*), for his time, trouble and attendance in the execution of the duties of the said

Recital of appointing a deputy.

WITNESS.
Principal to allow deputy part of fees, &c.

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(1) As to what offices may be performed by deputy, see 1 Bart. El. 281. (2d ed.)

(2) See the form of such appointment *post*. APPOINTMENT.

Apportionment of fees.

(3) The allowing a deputy to retain a part of the fees of an office for his trouble, is not within the statutes against trafficking with offices; for the profits still belong to the principal, and, if withheld, must be sued for in his name.—Gulliford *v.* De Cardonell, Salkeld, 466. Godolphin *v.* Tudor, *ib.* 468. Parsons *v.* Thompson, 1 H. Black. 322.

Salary.

(4) If the deputy is to receive a fixed salary instead of part of the fees, *ante*, p. 34.

AGREEMENTS.

Deputy.

office. And he the said (*deputy*) for himself, his executors and administrators, doth covenant and agree with the said (*principal*), his executors and administrators, that he the said (*deputy*) shall and will from time to time and at all times, so long as he shall be the deputy of him the said (*principal*), well and faithfully perform and execute all matters, duties, and things whatsoever, which doth, or shall, or may belong to or be incumbent upon the said (*principal*) as register, &c. as aforesaid, to perform or execute by himself or deputy, relative to the aforesaid office and the business and concerns thereof. And (1) shall also find and provide all books, pens, ink, paper, and other stationery wares necessary to be used in the said office for the proper business thereof, during his continuance therein as deputy aforesaid. And that he the said (*deputy*), his clerks, servants, or assistants, shall not do or neglect or suffer to be done or neglected any matter or thing whatsoever relating to the said office, whereby or by reason whereof the said office shall or may be forfeited or lost to the said (*principal*), nor do or suffer to be done or committed any fraud or extortion, bribery, corruption, malfeasance, or other matter or thing of any kind whatsoever, whereby or by reason whereof he the said (*principal*), his executors or administrators, can, shall or may be in anywise damaged or prejudiced in regard to the said office: but shall and will at all times defend and save harmless the said (*principal*), his executors and administrators, and his and their lands and tenements, and goods and chattels, of and from all and all manner of actions, suits, charges, troubles, damages and detriment which shall or may happen or be occasioned by or through any neglect, extortion, embezzlement or other undue practices or omissions of him the said (*deputy*), his clerks, servants, or assistants in the execution of the said office or in relation thereto. And further, that he the said (*deputy*) shall and will at the end of every quarter of a year, during his continuance in the said office, or oftener if thereunto reasonably required by the said (*principal*), his executors or administrators, make out, state, and deliver unto the said (*principal*), his executors, administrators or assigns, a particular, true and just account in writing under his hand, of all and singular the fees, profits, perquisites, benefits and emoluments which he, the said (*deputy*), his clerk, servants, assistants or others shall have had, derived or received, from or in respect of the said office, or which shall have in anywise arisen therefrom,

Deputy will perform the duties, &c.

Will provide books, &c.

Will not occasion forfeiture to principal.

Save principal harmless.

Will account quarterly,

Salary.

(1) If the deputy have a salary instead of a portion of the fees, it will be reasonable that this covenant should be omitted.

and also if thereunto required by the said (*principal*), his executors, administrators or assigns, shall and will make oath before one of the Masters of the High Court of Chancery or other competent authority or jurisdiction, of the truth of such statement and account to the best of his knowledge and belief. AND also shall and will pay or cause to be paid over unto the said (*principal*), his executors, administrators or assigns, the whole *or* one full and equal parts (the whole into equal parts being divided) of all and singular the fees, perquisites, profits and emoluments so to arise or be received from the said office. AND the said (*deputy*) doth hereby also for himself, his executors and administrators, covenant, promise and agree with and to the said (*principal*), his executors and administrators, that in case the said (*principal*), his executors or administrators, do, or shall give calendar months' notice or warning in writing under his or their hand or respective hands, unto and for him the said (*deputy*), to leave or retire from the execution of the said office, he the said (*deputy*) shall and will, immediately upon or after the expiration of the said notice or warning, quietly and peaceably surrender and yield up the possession of the said office to him the said (*principal*), or to such person or persons as the said (*principal*) shall lawfully appoint, and shall not nor will thereafter by himself, his clerks, servants, assistants or others, take or receive any fees, perquisites or profits belonging or incident to the said office, or otherwise intermeddle with the business or concerns thereof in anywise whatsoever. AND the said (*principal*), for himself, his executors and administrators, doth hereby covenant, promise and agree with and to the said (*deputy*), his executors and administrators, that in case he the said (*deputy*) shall be desirous of retiring from or resigning the said office, and shall give unto him the said (*principal*), his executors or administrators, calendar months' notice in writing thereof under his hand and seal, and do and shall at the expiration of such notice deliver up all books, papers and things in and belonging to the said office in a good and proper order, state, and condition, and give up quiet possession of the house, rooms, and offices wherein the business of the said office is or shall be carried on, and also make and give such account as aforesaid, and pay over to the said (*principal*), his executors and administrators, the just and true balance thereof, upon or by such oath as aforesaid if required, he the said (*principal*), his executors and administrators, shall and will acquit and release the said (*deputy*) of and from all further execution of the said office, and all responsibility in respect of or relation thereto. IN WITNESS, &c.

and pay over balance.

Deputy will resign on notice from principal.

Deputy may retire on notice to principal.

No. XXIX.

**An Agreement between Brothers and Sisters (or others) to make an equal* Distribution *of the Personal Estate of their father, (or other relative) if an unequal Distribution be made by his will.*

Recital.

ARTICLES of agreement indented, entered into, and concluded upon the day of in the year 18 , BETWEEN, &c. (*make each of the parties successively of separate parts*). WHEREAS the parties hereto are apprehensive that their father (*or as the case may be*) may bequeath or direct the disposition of his personal estate unto or amongst some one or more of them the said parties only, exclusively of some other or others of them, or unto and between them in unequal shares or proportions. AND whereas on account of the affection they bear unto each other, they are desirous that the same shall be equally enjoyed between them, share and share alike (*or* in the shares or proportions hereafter mentioned), and to prevent all differences and questions at any time hereafter arising in regard thereto, they have agreed to bind themselves unto such equal distribution thereof by these presents, notwithstanding any contrary or other disposition which may be made of the same by their said

WITNESS. Parties agree that the estate and effects of the father shall be equally divided between them.

. NOW THEREFORE THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in consideration of the natural love and affection they respectively bear unto each other, they the said (*parties*) do hereby for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, covenant, promise and agree with and to each other and the executors, administrators, and assigns of each other, in the manner following, (that is to say) that as to, for, and concerning all and singular the goods, chattels, debts, monies, securities for money, and other the personal estate and effects of the said their which has or have been, or shall or may be given, bequeathed, or left in or by his last will and testament or otherwise, unto or between and amongst, or in trust for any one or more or all of them the said parties hereto, the same and every part thereof shall be taken, received, holden and enjoyed by them respectively, and their respective

executors, administrators, and assigns, in equal parts, shares, and proportions, share and share alike, notwithstanding any devise, will, testament, codicil, or other instrument or instruments in writing whatsoever, which now is or are, or which at any time or times hereafter shall or may be made, executed or published thereof, or of any part thereof, granting, giving, or bequeathing the same unto, between, or amongst them or any or either of them to the contrary, in like manner as if the said had departed this life wholly intestate. AND further, that all and every sum and sums of money, legacy or legacies, estate, or effects, or interest, which at any time or times hereafter shall and may be given or bequeathed to, or in favour, or for the benefit of them the said parties, or any or either of them, by their said or by reason, virtue, or means of which they, any, or either of them, shall or may be thereby directly or indirectly entitled to or shall have received any beneficial interest whatsoever, the same and every part thereof shall within three calendar months next after the decease of him their said (or as soon thereafter as lawfully can be) be relinquished, given up, and brought into hotch-pot, or otherwise rendered, become, and be considered as one entire and aggregate sum to be equally divided, applied, and apportioned unto and amongst them the said parties hereto, their executors, administrators and assigns respectively, share and share alike, any thing in such will, gift, or instrument contained to the contrary thereof notwithstanding. AND for the due and just performance of all and every the covenants, clauses, declarations, and agreements aforesaid, according to the true intent and meaning thereof, and of the parties hereto, they the said parties do hereby bind themselves severally and respectively, and their respective heirs, executors, and administrators, to each other, and to the executors, administrators, and assigns of each other, in the penal sum of £ to be recovered by action of debt in any of his Majesty's courts at Westminster, or before any or either of the judges of those courts elsewhere, holding lawful cognizance and jurisdiction thereof. AND furthermore, the said parties do hereby severally covenant, declare, and agree in the manner and form aforesaid, that they the said parties and each of them, his, her, and their heirs, executors, and administrators, shall and will at any and all times and time hereafter, at the reasonable request of any one or more of the other or others of them, his or their respective executors, administrators, and assigns, make, do, and execute all and every such further and other act and deed, or acts and deeds, and conveyances and assurances in the law whatsoever, for the better and more effectually or

Notwithstanding any contrary bequest.

Parties covenant that the bequeathed estate shall be brought into hotch-pot.

Penal sum on default.

Covenants further assurance.

AGREEMENTS. *Division.*

satisfactorily confirming these presents, and carrying into effect and execution the object and intent thereof, and of the said parties thereto, as the counsel or respective counsels in the law of him, her, or them so requiring the same shall advise or require.

IN WITNESS, &c.

No. XXX.

An Agreement by Proprietors of Common Field Lands to divide and enclose *the same*(1)*; and to procure a Decree in Chancery, or Act of Parliament*(2)*, to ratify the Division if requisite.*

ARTICLES of agreement indented, made, and concluded upon, this day of , in the year of our Lord 18 . BETWEEN the several persons whose respective names and seals are hereunto set and subscribed, being respectively owners, tenants, and occupiers, or persons otherwise interested in divers parcels of land lying dispersedly in or over the common field of within the parish of , in the county of , and called or known by the name of the Western Field. WHEREAS the lands lying in the common field aforesaid, have for many years past yielded but little or no profit to the tenants or occupiers thereof, and the same are every year more and more worn out and impoverished, and for want of due tillage and manure, by reason of the great distance of the said field from the houses and residences of the principal inhabitants of the said parish, and the badness of the roads and ways leading thereto, and which cannot be remedied without far greater expense than will be answered by the increase of the fruits and profits thereof, whilst the same lies intermixed and unenclosed. AND WHEREAS by ancient custom in regard to the said common field (on account of the poverty thereof) one half part of the same lies fallow and untilled, and unproductive every other year, and the lands so lying fallow are usually fed with sheep, which are often rotted by the watery condition of the ground; and many other inconveniences arise to the owners and occupiers of the said common field for want of their particular portions thereof being laid together and enclosed; for remedying which, and for encouraging the improvement of the said

Recitals of advantages to accrue from enclosing.

(1) See the Acts 29 Geo. 2. c. 36. and 31. ib. c. 41; empowering commoners to inclose waste for the growth of timber; and the general inclosure Act, 41 Geo. 3. c. 109; and 1 and 2 Geo. 4. c. 23. *ante*, p. 8.

(2) An Act was afterward deemed necessary and obtained; the petition, and Bill for which, will be found under the head "PARLIAMENTARY FORMS."

AGREEMENTS.
Enclose.

lands, for the general benefit and advantage of themselves, and of the community at large, the parties hereto, as such owners and occupiers as aforesaid, have agreed to make a division and allotment of the said field amongst themselves, in such manner as hereinafter is expressed. NOW THESE PRESENTS WITNESS, that it is hereby concluded and agreed upon, by and between all and every the parties hereto being respectively owners, tenants, and occupiers of the said lands, or otherwise interested therein: and each of us doth accordingly for himself, for his heirs, executors and administrators, covenant, grant and agree with and to each and every of the other of them, and his, her and their heirs, executors, administrators and assigns, by these presents in the manner and form following (that is to say), that a division and separation by metes and bounds, and an enclosure by fences, of the lands and tenements lying in the said common field, called, &c., in the parish aforesaid, shall be forthwith made by the commissioners or persons hereinafter named, and by them allotted and assigned to and amongst the several parties hereto at their own expence, costs and charges, according to their respective interests in such manner as hereinafter is provided, and which enclosures shall from time to time be renewed, preserved, and continued for ever, and all and every of the said parties shall hold and enjoy his, her, or their share or portion, so to be allotted to him, her, or them respectively, of the said common field in severalty, and as several and distinct parcels thereof, with full liberty to plough, manure, and cultivate the same at pleasure as a separate and distinct farm, and shall have and enjoy the same estate and interest in the part so to be allotted to them respectively, as they now have, or at or immediately before the time of such division or allotment had in the parts or parcels of the said common lands, in lieu whereof such allotments were made; and that after such allotments shall be made, every of them the said parties respectively shall, at their own respective costs and charges, securely and properly hedge and fence in the parts or parcels so allotted to them respectively, and at all times thereafter keep the said hedges and fences in good and proper repair. AND for the more just and impartial execution and performance of the said division and allotment it is hereby agreed, that A. B. C. D. and E. F. of, &c., shall be and are hereby named and appointed commissioners for making the same, by admeasurement, survey, and otherwise as they shall think fit, in making which allotments and divisions, due regard shall be had by the said commissioners to the quality and situation, as well as to the quantity of land to be assigned or allotted, and also to the allotting and assigning the same, so as that every of the allotments to each of the

WITNESS. Owners, &c. agree to divide and enclose the common fields.

Division to be made by commissioners.

AGREEMENTS.

Enclose.

said parties may lie as nearly contiguous to each other as may be. AND who shall also assign and allot proper, convenient, and sufficient roads and ways, for every of the said parties to their respective allotments, in such place and places, and in such directions, as shall be most fit and convenient for the same, which roads and ways shall be allowed out of the whole of the said common field, according to the proportion thereof belonging to each of the said parties. AND for the preventing disputes and differences regarding the said divisions or allotments, each and every of the said parties hereto doth hereby covenant and agree in the manner aforesaid, from time to time, and at all times hereafter, to abide by, observe, and perform, all and every the orders, directions, determinations, and judgements, which shall from time to time be had, made, or given by the said commissioners or the major part of them, touching and concerning the same, and other the matters and things hereinbefore mentioned or referred unto. AND it is hereby further agreed, that after the said allotments and divisions shall be made and perfected, the same, and the situation and number of acres or other quantities thereof, and the parties to whom the same shall be made, and the number of acres or quantities of land in lieu of which the same were made, shall be put into writing at the equal expense of the parties, by the said commissioners, and which said writing shall be enrolled at the then next general quarter sessions, to be holden for the said county of there to be preserved for the inspection and benefit of all parties to be at any time interested therein. AND for ratifying, settling and confirming such allotments, divisions, and inclosures as hereinbefore are agreed and intended to be made, and of the estates, rights, and interests therein, it is hereby lastly agreed that application shall be forthwith made to the High Court of Chancery for that purpose, and to order (1) proper and sufficient con-

Ways to be made.

Parties will abide by decision of the Commissioners.

To be made in writing and enrolled.

Decree in chancery to be had if required.

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(1) If it be deemed requisite to apply to Parliament for an act of confirmation, say "an application by way of petition to the High Court of Parliament shall be forthwith made for that purpose, and in which act there shall be contained (amongst other clauses and provisions which it may be considered necessary or proper that the same should contain) a clause or provision that the executors, guardians, or trustees of any person or persons under age or otherwise incapable by law to accept such allotments as shall be made by the said commissioners, shall be thereby enabled to accept the same for the use of such person or persons, and also a clause or provision that nothing herein or in the said act to be contained shall be construed to hinder or prejudice the Lord of the Manor of aforesaid, or his manorial rights or interests *or of the rector* or impropriate for the time being, of the great tithes arising out of the said

Act of Parliament.

AGREEMENTS.

Enclose.

veyances and assurances in the law to be executed and made by each and every of the said parties hereto, to the other and others of them, at their own costs and charges in all things (in proportion to their respective interests) of or concerning the premises, in such manner and form as counsel in the law shall deem requisite or expedient. AND for the due and punctual performance of all and singular the covenants and agreements hereinbefore contained by the said parties hereto, each of them doth bind himself, his heirs, executors, and administrators, in the sum of £ , to be paid unto such of them respectively, his or their heirs, executors, or administrators as the commissioners aforesaid or the major part of them shall direct or appoint in that behalf. IN WITNESS, &c.

Penalty.

Common Fields; nor be construed to revoke or in anywise alter any deed, settlement or limitation whatsoever, already made of any part or parts of the said field or lands comprised therein. And lastly, that every of them the said parties to these presents shall and will sign a petition, and do and concur in doing all such other acts, matters, and things as shall be requisite and proper to obtain the said act, and in no wise prevent or impede the same in or from its progress through Parliament or receiving the royal assent, or otherwise passing the said act and becoming a law of this realm." See *ante*, pp. 1 and 3

No. XXXI.

An Agreement for a Deed of Enfranchisement *of Copyhold Premises.*

ARTICLES of agreement entered into this day of in the year of our Lord BETWEEN (*the lord of the manor*) of, &c., lord of the manor of , in the county of of the one part, and (*the copyholder*) of, &c. one of the copyhold tenants of the said manor, of the other part, as follows, (that is to say) Whereas the said (*lord*) is seised to him and his heirs (1), of an estate of inheritance, in fee simple, of and in the said manor of ; and the said (*copyholder*) is seised or possessed of the messuage or tenements, and land hereinafter described, being within and parcel of the said manor, of an estate of inheritance (2), by copy of court roll, at the will of the lord according to the custom of the said manor. AND WHEREAS the said (*lord*) at the request of the said (*copyholder*), hath agreed to enfranchise the said lands and hereditaments, in consideration of the sum of £ Now the said (*lord*) doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree, with and to the said (*copyholder*), his heirs and assigns, that he the said (*lord*), his heirs (3) or assigns, shall and will at the costs and

Parties.

Recital of seisin.

Covenant by lord to execute deed of enfranchisement.

(1) As an enfranchisement is effected by an union of the freehold with the copyhold interest, it is essential that the lord should possess the freehold, and as the enfranchisement will be commensurate with the estate granted by the lord, it will be entire or for a limited period, accordingly as he has that or a greater estate. Conesbie v. Rusky, Cro. Eliz. 459*; unless he enfranchise by virtue of a power in a settlement or will enabling him to enfranchise, and see *post*. Head "ENFRANCHISEMENT."

The lord of the manor must be seised of the freehold.

(2) It is not necessary that the copyholder should have the fee, as the enfranchisement is effected by the grant of the fee simple by the lord, whether it be to a tenant having the same or a less estate; Lane's Ca. 2. Co. 16; but if he have but a particular estate he will in equity be a trustee for those in remainder; Wynne v. Cookes, 1 Brow. Ch. Ca. 515; Challoner v. Murhall, 2 Ves. Jun. 524.

Copyholder need not have the fee.

(3) A covenant or agreement under seal by an ancestor for himself and his heirs relative to the real estate, is binding upon the heir, although he take nothing by descent, but by strict settlement or otherwise; Neeve v. Keck. 9 Mod. 106; Sikes v. Lister. 2 Eq. Ca. Ab. 25. pl. 28; Chetwynd v. Fleetwood, 4 Brow. P. C. 495.

Heir bound by ancestor's covenant.

AGREEMENTS.
Enfranchise.

charges in all things of the said (*copyholder*) (save only in respect of fines or recoveries if requisite, and the assignment of outstanding terms not made attendant upon the inheritance); and upon payment to him the said (*lord*), his executors, administrators, or assigns, of the said sum of £ of lawful money of that part of the united kingdom of Great Britain and Ireland called England, well and truly convey and assure, by such deeds or instruments in the law as counsel shall advise, unto and to the use of him the said (*copyholder*), his heirs and assigns for ever, or as he or they shall direct or appoint, free from incumbrances, ALL &c. (4) wholly freed, discharged, and enfranchised, from all and all manner of customary and other fines, heriots, fealty, suit of court, and copyhold payments, services, duties, and obligations whatsoever. AND which said conveyance and assurance shall contain all proper parties, and usual and other proper covenants, declarations, and agreements, concerning the title, quiet enjoyment, free from incumbrance, and for further assurance of and to the said premises, and also a grant and assurance of all commonable and other rights (5) and privileges whatsoever, incident or annexed unto the said hereditaments, so to be enfranchised, as part or parcel of the said manor, whereof the same are holden (6). AND the said (*copyholder*)

In consideration of the sum of £

Deed of enfranchisement to contain all proper covenants, &c.

Covenant by copyholder to pay consideration money.

Lands.

(4) Here describe from the copies of the court-rolls the premises intended to be enfranchised.

Incidents to the copyhold lost at law by enfranchisement.

(5) The copyhold lands being by the enfranchisement separated from the manor, they will of course lose all those rights which belonged to them as part of the manor; it is proper therefore, in order to preserve these, that they be granted *de novo*, by the lord. See Lit. s. 147; Co. Lit. 102 b. This is however to be understood as being the case at law only, for although extinguished at law, they will be preserved in equity, where such appears to have been the intention of the parties; Stryant v. Staker, 2 Vern. 250.

But will be set up again in equity.

Lord's title.

(6) *As enfranchisements are generally solicited on the part of the tenant it is not usual to require the lord to enter into express stipulation for the delivery of an abstract of title &c., nor is it actually necessary, as should he not furnish satisfactory evidences of his title to the inheritance, the tenant will not be bound by his agreement for the enfranchisement; where however the request proceeds from the lord to his tenant, which it sometimes does, it is reasonable to expect from him the same previous covenants in these respects, as if he were contracting for the sale of his freehold to a stranger (1); in which case add,

To deliver abstract, &c.

" *AND to the end and intent aforesaid, he the said (*lord*) shall and will at his own costs and charges, deliver within one calendar month from the date hereof, a true and perfect abstract of the title, of him the said (*lord*) to the said manor; and upon the execution of

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(1) See *ante*, Vol. I. No. 1. also 1 Bythe. Prec. 272.

in consideration of the presents aforesaid, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*lord*), his heirs and assigns, that upon the execution by him or them of such conveyance or assurance by way of enfranchisement as aforesaid, he the said (*copyholder*), his executors or administrators, shall and will duly pay or cause to be paid, the said sum of £ of such lawful and current money as aforesaid, unto the said (*lord*), his executors, administrators, or assigns. IN WITNESS, &c.

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the conveyance or assurance of the said hereditaments, or whenever thereunto reasonably requested, make and deliver to the said (*tenant*), his heirs or assigns, true and attested copies of such deeds and evidences of title as he or they shall require, and enter into a proper covenant for producing, at the expense of the tenant, his heirs or assigns, the original thereof.

AGREEMENTS.
Engraving.

No. XXXII.

**An Agreement with an Engraver to* engrave *a Set of Cuts or Prints for a Publication.*

ARTICLES of agreement made this day of , in the year 18 . BETWEEN (*the author or publisher of*, &c.) of the one part, and (*the engraver of*, &c.), of the other part. WHEREAS the said (*engraver*) hath agreed with the said (*author*, &c.), to furnish him with a set of engravings for a certain work about to be published, to be entitled [or for a new edition of, &c., *as the case may be*], upon such subjects, and to be so executed, and at such price, as hereinafter are mentioned. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, the said (*engraver*), for himself, his heirs, executors, and administrators, doth covenant, declare, and agree with and to the said (*publisher*), his executors, administrators, and assigns, by these presents in the manner following, (that is to say) That he the said (*engraver*), his executors or administrators, shall and will at his and their own costs and charges, find and provide good, proper, and well executed copper plates and engravings, in the stroke manner [*or as agreed*], on the subjects following, (that is to say) a frontispiece to delineate, &c., the effigies or portraits, after the best likenesses extant in England, of all the Roman emperors from the time of Julius Cæsar inclusive, to, &c., *or* of every king and queen which has reigned in these realms, from &c., and also plates and engravings exhibiting the battles of, &c. &c., of the size of by , after the drawings thereof by, &c. (*or as the case may be*), at the price or sum of £ each, so and in such manner, and to the intent that the same cuts, plates, and engravings, may be printed by him the said (*publisher*), and be placed or affixed in and published with the said work entitled, &c. as aforesaid. AND shall and will deliver one of every such plates or engravings unto him the said (*publisher*), his executors, administrators, or assigns, or his or their order, completely finished and perfected, on the day of in every month, until he shall receive such orders to the contrary as here-

WITNESS. Engraver agrees to supply cuts, &c.

inafter is mentioned, and deliver the first thereof on or before the of now next ensuing. And in consideration of the said cuts, plates, and engravings being so finished and delivered as aforesaid, he the said (*publisher*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*engraver*), his executors, administrators, and assigns, that he, the said (*publisher*), his executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said (*engraver*) within days next after the delivery of every such cut, plate, or engraving aforesaid, the sum of £ of lawful current money of Great Britain. And for the executing and delivery of the said cuts, plates or engravings, at the time and in the manner aforesaid, he the said (*engraver*) doth, &c. (*penalty clause*) (1). PROVIDED always nevertheless, and it is hereby declared and agreed, by and between the said (*publisher*) and (*engraver*), that in case the said (*publisher*), his executors, administrators, or assigns, shall at any time hereafter, before all the said cuts, &c. shall have been finished and delivered, give three calendar months' notice in writing under his or their hand or hands, to the said (*engraver*), his executors, administrators, or assigns, that he the said (*publisher*), his executors, administrators, or assigns, shall not require any more or other cuts, &c. than have been already finished or delivered, or only such and so many others of the said cuts, &c. hereby agreed to be supplied by the said (*engraver*) as shall in such notice be particularly specified; then and in such case, upon the completion thereof to that extent, these presents shall cease and be void in like manner as if the same had never been made, but nevertheless without prejudice to any previous orders given or work performed. And it is hereby further declared and agreed, by and between the said (*publisher*) and (*engraver*), that if any dispute or difference shall occur between them, relative to the execution of the said cuts, &c., or the number thereof to be delivered or provided, or either of them, or otherwise in respect of the same or of these presents, such disputes or differences shall as often as the same may happen be referred, &c. (*arbitration clause*) (2). IN WITNESS, &c.

AGREEMENT.

Engraving.

Publisher covenants to pay.

Penalty.

Counter orders.

Arbitration.

(1) See *ante*, pp. 65. 70. (2) See *ante*, p. 27.

Penalty.
Arbitration.

AGREEMENTS.

Exchange.

No. XXXIII.

An Agreement for an Exchange *of* Freehold (1) Lands.

Variations where the premises are Copyhold or Leasehold.

ARTICLES of agreement entered into this day of , in the year of our Lord , BETWEEN A. B. of, &c. for himself, his heirs, executors, and administrators, of the one part, and C. D. of, &c. for himself, his heirs, executors, and administrators, of the other part (2), as follow, that is to say, WHERE-

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In exchange, each party must have an equal quantity of estate.

(1) In order to the validity of an exchange, the estate of each party must be of the same quality, viz. both freehold, copyhold, or leasehold; and both estates must contain the same quantity of interest, as fee simple, fee tail, for the life of each party, or a term of 20 years, for a term of 20 years, 2 Blac. Com. 323, and not lands in fee simple, for lands in fee tail, Shep. Touch. 296; lands for the life of one party, for lands *pur autre vie* of the other party, Perk. s. 275; Finches, Ley. 27, or the like; except only that an estate tail after possibility of issue extinct, is considered as possessing the same quantity of interest only as an estate for life, and therefore exchangeable with that estate, 11 Co. 80; 2 Blac. Com. 125; but subject to these rules, both or either of them may be corporeal or incorporeal, as lands for an advowson, or the like; in possession or reversion, Co. Lit. 51; Lit. 65; Perk. s. 280; Cro. Eliz. 902. p. 6. of different value or quantity of land, ib.; solely or jointly seised, ib.; and see 4 Elem. Conv. 529.

And an entirety of the estate.

The exchanging parties must also have an entirety of interest between themselves, on the subject of the exchange; if, therefore, they or either of them be joint tenants, &c. with others, a partition must be made with their co-tenants, before any proposed exchange can be completed by them alone. Shep. Touch. 292; Attorney Gen. v. Vigors, 8 Ves. 256.

Number of parties cannot exceed two.

(2) It has been said, that an exchange can only be between two. See Ca. of Eton Coll. 2 Wils. 480. The reasons given for which are, 1st, if there were three or more parties, each party would give to one, and receive from another or third person; whereas, the consideration for the implied warranty there is in an exchange, is the receiving something from the same person to whom something is given. 2dly, That if there were more than two parties, the implied condition of re-entry, consequent upon the warranty, would make each party liable to a re-entry for the fault of another's title, as well as his own, 4 Elem. Conv. 528; but the reasons shew that it is not the number of *persons* which is meant when it is said, there can be no more than two parties to an exchange, but only that there can be no more than two distinct exchanging parties or sets of persons, the one receiving from the other by mutual and reciprocal

AGREEMENTS. *Exchange.*

AS the said A. B, is seised (1) to him and his heirs, of a certain messuage and lands, situated at , in the county of , and called or known by the name of , and containing by estimation , little more or less, and now in the tenure or occupation of ; and the said C. D. is also in like manner seised of a certain messuage and lands, situated at , in the said county of &c.

Agreement to exchange.

AND whereas the said A. B. and C. D. have agreed to exchange with each other their said respective messuages and hereditaments (subject to the approbation of their respective counsel as to the title thereof), and the hereditaments of the said A. B. being considered to be of greater value than the hereditaments of the said C. D. (2), by the sum of £ , the said C. D. hath agreed to give to the said A. B. the said sum of £ for equality of value (3). Now

Abstracts to be furnished in a certain time.

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grants in exchange; it is therefore immaterial how many persons are parties to the contract, so that they form together but two classes or sets of persons, between which the mutuality of giving and receiving may be reciprocal: Co. Lit. 59. a. n. (1). See also *post. Title* "EXCHANGE."

Copyholds.

(1) If the lands intended to be exchanged, be copyhold, say,

"WHEREAS the said A. B. is seised to him, and his heirs, according to the custom of the manor of of a certain copyhold, or customary messuage and lands, situated, &c."

Leaseholds.

If the premises be leasehold, say,

"WHEREAS the said A. B. is possessed of a certain messuage or tenement, and premises situated at in the county of for a term of years, commencing from the day of subject to the yearly rent of £ reserved by and the covenants and agreements contained in a certain indenture of lease, bearing date the day of and made or expressed to be made between, &c."

Difference in value.

(2) *If the difference in the value of the premises is not agreed to, and is to be determined by arbitration, say,

"It is hereby agreed, that it shall be referred to and , at the joint expense of the said parties, to ascertain and determine what sum of money shall be paid to him by the said C. D. for equality of exchange, and in case of difference by the said referees, then to an umpire or third person to be by them named."

(3) See other forms of agreements for an exchange, 1 Byth. 260; and an agreement for an exchange by a *corporation*, ib. 269; see also notes to agreement, *ante*, Mod. Prec. Vol. I. No. I. several of which are equally applicable to all agreements for transferring land from one party to another.

AGREEMENTS.

Exchange.

IT IS HEREBY DECLARED AND AGREED, that each of them, the said A. B. and C. D. and his heirs, shall and will cause to be made and delivered at his and their own expense, unto the other of them, his heirs or assigns, or his or their solicitor, within one calendar month from the date hereof, a full and satisfactory abstract of his respective title to the said premises so agreed to be exchanged as aforesaid (1).

Mutual conveyances to be executed.

And also shall and will, on or before the day of , now next ensuing, upon having a sufficient conveyance or assurance of the lands and hereditaments of the other of them, made to him, his heirs and assigns, (the said A. B. receiving from the said C. D. his executors, administrators, or assigns, the said sum of £ ,) execute at the expense of the other of them (except as to fines and recoveries, and outstanding terms if any) proper conveyances (2) and assurances of the inheritance in fee simple in possession of their respective hereditaments, together with the title-deeds thereof, unto

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Leaseholds.

(1) * If the premises be leased, add,

"But which abstract shall not extend to or comprise the title of the lessor of the said premises:"

Without which either party might require the title of the lessor to be produced, but which in all probability could not be obtained.

Copyholds.

(2) If the premises be copyhold, say,

"Execute proper surrenders and assurances of the inheritance in fee simple, according to the custom of the said respective manors, of their respective hereditaments, unto the use of the other of them, his heirs and assigns, free from all charges and incumbrances, except only the rents, suits, and services respectively due or payable to the lords or ladies for the time being of the said respective manors, and a deed of conveyance containing the usual covenants for the title of the said parties and their quiet enjoyment, and for further assurance by and to each of them respectively."

Leaseholds.

If the premises be leasehold, say,

"Execute valid assignments, or other proper and effectual assurances, of all and singular the said premises, for the then residue of the said several terms so granted by the herein before in part recited indentures of lease as aforesaid, and all assignments of the same respectively, unto the other of them, his executors, administrators, and assigns, free from all incumbrances, except only the several rents, covenants, and agreements, in the said several indentures of lease reserved and contained respectively, on the tenant or assignee's part, to be paid and performed.

and to the use, or for the other of them, his heirs and assigns, or as he or they shall direct, free from all incumbrances. AND in the said assurances all usual and proper covenants shall be contained by and to the said parties respectively; and all persons possessing any legal or equitable estate or interest in the said premises, or beneficially entitled to the said sum of £ , shall concur if required according to their respective interests. AND it is hereby agreed, that the said parties shall respectively be entitled to the rents and profits of the said premises, so to be to them respectively assured, from the day of , now last past, up to which time, all rents, taxes, rates, assessments, and charges payable in respect of the said premises, shall be paid and discharged by the party conveying the same. AND further, &c. (1). AND the said C. D. doth hereby covenant, promise, and agree with and to the said A. B. his heirs, executors, and administrators, that upon the execution of such conveyances and assurances, and delivery of such possession and title-deeds, by the said A. B. as aforesaid, he the said C. D. his executors or administrators, shall and will pay unto the said A. B. his executors, administrators, and assigns, the said sum of £ , in lawful current money of England, as or for such equality of value as aforesaid. PROVIDED ALWAYS, that these presents shall not be void by reason of any trifling error or omission which may have been made in the description herein before given, of the hereditaments of either of the said parties, so that the same be of the same nature and quantity of interest, and be situated within the county herein before mentioned, or of any quit

Conveyances to contain all proper covenants, &c.

Each party to be entitled to the rents, &c. from the last quarter day.

The sum of £ to be paid for equality of exchange.

Errors in descriptions, &c. not to vacate the contract.

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(1) As it is essential to constitute a legal exchange, that the word "exchange" should be used in the deed by which the agreement for exchange is executed, and as that word is holden to imply mutual warranty of title, by each party to the other, by virtue of which either party if ousted from the lands taken by him in exchange, may re-enter upon those given in exchange, Batard's Case, 4 Co. 21. Co. Lit. 174; Attorney Gen. v. Vigor, 8 Ves. Jun. 256; it will be proper, should the parties desire, to prevent its legal consequence, that the agreement should declare,

Warranty implied by the word "exchange."

"AND FURTHER, that in case the said assurances shall be effected through or by means of the word exchange, to be therein used, then it shall be declared and provided, in or by the said assurances, that neither party shall enter upon the lands of the other of them, by reason of any defect of title therein, under or by virtue of the warranty and condition of re-entry, implied by the word exchange, to be there used or otherwise; but each of them shall rest upon and abide by the covenants for the title, quiet enjoyment, and further assurance to be therein contained, and the remedies thereby given."

Neither party to take advantage of the implied warranty.

AGREEMENTS.
Exchange.

rent or other small out-going to which the same may be subject, but in such case, a reasonable abatement or equivalent shall be made or given, as the case may require, by or to the said parties respectively, or their respective heirs, executors, or administrators. AND it is further agreed, that in case the title of either of the said parties to the hereditaments hereby agreed to be conveyed in exchange, shall prove defective (except as last aforesaid), these presents shall be void, and all reasonable costs, charges, and expenses paid, or sustained by the said parties, or either of them, or his or their respective heirs, executors, administrators, or assigns, or his or their respective solicitors in the investigation thereof, shall be wholly borne and paid by the said party, whose title shall so prove defective, his executors or administrators. AND it is further agreed, that any loss or damage which may happen to the hereditaments of either of the said parties, by fire, storm, or tempest, or any increase which may take place in the value thereof, at any time between the date hereof and the completion of the said exchange, shall not affect the present contract, nor entitle either of the said parties to any abatement or equivalent in respect thereof. PROVIDED nevertheless, that the benefit of any policy or policies of insurance, which shall be then subsisting against any such loss or damage shall in that case belong to the parties taking the premises, upon or in respect of which any such policy shall subsist, his heirs, executors, administrators, or assigns. AND it also agreed, that neither of the said parties or his heirs shall from henceforth, during the subsistence of the present contract, grant or contract for any leases or agreement for leases of the said premises, or any part of the hereditaments hereby agreed to be conveyed by him in exchange, without the consent in writing of the other of them, his heirs or assigns. AND it is hereby lastly agreed, that all matters relating to the said exchange hereby agreed to be made, not herein particularly provided for, shall be regulated by the rules of law and equity, or the practices amongst conveyancers in relation thereto, and in case of difference of opinion in respect thereof, then by reference to arbitration in the usual manner of submission for that purpose (1). IN WITNESS, &c.

If title of either party prove defective, these presents to be void.

Intervening accidents not to affect the contract.

Neither party to grant leases.

Matters not hereby provided for, to be regulated by the practice in similar cases.

Or by reference to arbitration.

Decree, &c.

(1) *An agreement to apply to chancery or parliament for a decree or act of confirmation if necessary may be added as *ante*, p. 127.

No. XXXIV.

An Agreement between Parishioners to contribute rateably towards the Expence *of a Suit for Tithes, &c.* (1).

Variations where other persons have a common interest in the subject of the suit (2).

ARTICLES of agreement, indented, had, made and concluded, this day of , in the year of our Lord .

BETWEEN (*three or four of the principal parishioners*) of the one part, and the several other persons, inhabitants, and parishioners, or occupiers of lands, tenements, or hereditaments, within the said parish of , whose hands and seals are hereunto set and

Parties.

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(1) To assist or bear a portion of the expence of a suit of another, in which the party assisting has no interest, is contrary to the rules of common law, Co. Lit. 368. a.; 2 Roll. Ab. 114; D. pl. 1; and forbidden by divers statutes; 1 Ric. 2 c. 4; 32 Hen. 8. c. 9; as tending to the encouragement of litigation; but where persons claim a common interest in the same thing, as in a way, church-yard, common, or the like, by the same title, they may lawfully assist each other in the maintenance or defence of any suit concerning it. Haw. P. C. 18. s. 18; 2 Inst. 564; 2 Roll. Ab. 115, 117. If however the rights of the parties be discordant, as by being claimed under different titles, so as to give rise to different causes of action or species of defence, it seems their concurrence in the expence will amount to maintenance, although their interest be in some respect in common between them. See Oliver v. Bakewell, 4 Gwil. 1381.

Illegal for a person to contribute expence of suit.

(2) * Although the above form is particularly adapted to a suit instituted by or against a parish, yet it may with great ease be made to serve as a precedent for any similar object, where several parties (as the lord of a manor and commoners, associated tradesmen, joint tenants, or others) have a common interest in the subject of the suit, in which cases make those who have already agreed to become parties, of the one part, and such as may hereafter become so, of the other part, as above, recite the commencement of the suit depending or agreed to be instituted as the case may be; and then proceed to the witnessing or operative part of the agreement, *post*, p. 140, saying "parties hereto," instead of "(*principal parishioners*), *and other the inhabitants, parishioners, and occupiers aforesaid.*"

Other parties.

AGREEMENTS.
Expences.

subscribed, of the other part. WHEREAS (*the rector*) of, &c. rector of the said parish of , in or about term last, exhibited his bill in his majesty's court of exchequer against the said parish, praying for an account of all the titheable matters whatever (except corn, grain, and hay), which the said parishioners respectively had on any lands situated within the said parish, or the titheable places thereof, in the year , and also of the money due from them to him for easter offerings in such year, and that the same or the value thereof respectively might be decreed to be paid to him by the said parishioners and continued to be paid in future. AND WHEREAS the said (*principal parishioners*) and other the inhabitants, parishioners, and occupiers aforesaid, conceiving that they would be greatly aggrieved by such decree, and therefore materially interested in the event of the suit, have mutually resolved to defend the same at their joint expences, and have agreed to contribute towards the expence thereof, in proportion to the sums at which they shall respectively from time to time be justly rated to the church and poor of the said parish. NOW THEREFORE THESE PRESENTS WITNESS, and it is hereby covenanted, declared, and agreed by and between the said (*principal parishioners*) and all and every other the inhabitants, parishioners, and occupiers of lands, tenements or hereditaments, within the said parish of , who now have or shall or may hereafter become parties hereto, by signing and sealing these presents for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, with and to the other and others of them, and their and each of their respective executors and administrators, that they the said (*principal parishioners*) and all and every other the said inhabitants, parishioners, and occupiers, shall and will pay and contribute unto the committee to be appointed for the purposes of these presents as hereinafter is provided, from time to time, as and when in the opinion of the said committee, or the major part of them, there shall be occasion, in proportion to the rate or assessment to which they now are or at any time or times hereafter shall be rated or assessed to the church or poor of the said parish, all and every such sum and sums of money as shall be requisite and sufficient to defray all costs and expences incurred, or to be incurred, in defending the said suit, or in defending or prosecuting any other suit or suits which shall or may be prosecuted or commenced by or against the said parish, or any of the parishioners thereof, upon or in relation to the matters or things which may arise out of or be connected therewith, and all costs which shall be decreed against the same parish or parishioners, parties here-

Recital of suit instituted.

Recital of agreement to defend the suit at the common expence.

Covenant by the parishioners to contribute in rateable proportions.

to, or any of them. PROVIDED ALWAYS, and it is hereby further covenanted, declared, and agreed, by and between all and every the said parties to these presents, that as often as any of the said inhabitants, parishioners, or occupiers, shall happen to quit or leave the farms, lands, tenements, or hereditaments, which he, she, or they now occupy respectively, all and every such person or persons who shall take and occupy such farms, lands, tenements, or hereditaments, in his, her, or their room, either immediately after or at any subsequent or future time, shall be at liberty to execute these presents, and shall thereupon be entitled to the same or like benefit and advantage, as the person or persons to whom he, she, or they shall succeed would or might have been entitled to by virtue thereof, in case he, she, or they had continued such inhabitants and occupiers as aforesaid. AND it is hereby further covenanted, declared, and agreed, that for the more easily and speedily raising such money as may from time to time be wanted for the purposes aforesaid, and for the better carrying into execution the covenants and agreements herein contained, and other the ends and intents of these presents, they the said inhabitants, parishioners, and occupiers, whose hands and seals are hereunto set and subscribed, HAVE nominated, authorized, constituted, and appointed, and by these presents Do nominate, authorize, constitute, and appoint (*certain persons as a committee to conduct the suit*) to be a committee of managers or directors, in or concerning the matters aforesaid, who shall or lawfully may at any time or times hereafter, and from time to time as often and in such manner as they shall see occasion or think fit, cause notice to be given in the parish church of aforesaid, of or for a meeting of the said members of the said committee for the time being, to be holden upon all or any of the matters or things relative to any the suit or suits aforesaid, with full and absolute power for such committee, at every or any of the said meetings to make and give such orders and directions for raising and levying money, for defending or carrying on the said suit or suits, and for appointing any solicitor or solicitors for that purpose, and otherwise effectuating the ends and purposes of these presents, in such manner as they in their discretion shall think proper; and at every which said meetings, it is hereby declared that the opinions and votes of the major part of the committee, or of any of them who shall be then present upon any question or proposition to be then discussed, shall be binding upon the other and others of them, and the several persons who shall or may be parties hereto for the time being. AND for the satisfaction of all and every the parties who shall not attend at such meeting or meetings, the said committee

Future occupiers of lands to be at liberty to become parties.

Appointment of committee to manage the proceedings.

Acts of committee to bind the parties.

Committee to cause other resolutions to be registered.

AGREEMENTS.

Expences.

shall by a clerk, to be by them for that purpose nominated, and to whom they are hereby authorized to make a reasonable allowance or compensation, cause to be fairly entered all and every the resolutions and proceedings which shall be made or had at such meeting or meetings, into a book or books to be kept for that purpose, and shall and will subscribe their respective names thereto, and which said book or books shall during the hours of , on every in each week, be open to the inspection of the rest of the said inhabitants, occupiers, and parties hereto. AND all and every of the said inhabitants, parishioners, and occupiers, parties hereto, do hereby severally and respectively for themselves, and their respective heirs, executors, and administrators, but not any one or more of them, for any of the other or others of them, covenant, promise, and agree, with and to each other, and the executors, administrators, and assigns of each other, that they and each and every of them (each covenanting separately and apart as aforesaid) shall and will obey, observe, perform, fulfil, pay, and keep all such orders, assessments, and directions, which shall be made or given by the said committee, provided the same be made and entered as hereinbefore directed, and that they or any or either of them, shall not nor will resist, delay or defeat, or in or by any way or means attempt to resist, delay, or defeat, any remedy, steps, or proceedings which the said committee shall or may use or take or direct to be used or taken for recovering or compelling payment thereof. AND it is hereby further mutually agreed between all and every the said parties hereto, that upon the death or deaths of any one or more of the persons so appointed of the said committee as aforesaid, or other the committee for the time being, or in case any one or more of them shall be minded and desirous to resign his or their place or places, or shall happen to quit or leave the farms, lands, tenements, and hereditaments, by them respectively occupied within the said parish, so that by any of the means aforesaid, or otherwise, the said committee shall be reduced to a less number than seven, then and in any of the said cases, such remaining seven, together with the rest of the persons whose hands and seals are or shall then be hereunto set and subscribed, shall and may elect and choose others of the said inhabitants, parishioners, and occupiers, parties hereto, to succeed and supply the place or places of him or them so dying, resigning, quitting, or leaving the said lands, or parish, as aforesaid. AND it is hereby further expressly agreed by and between all and every the said inhabitants, parishioners, and occupiers, parties hereto, that if any dispute or difference of opinion shall happen to arise between them, touching or concerning the construction of these presents, or of

Parties will abide by assessment of committee.

Vacancies in committee to be filled up.

Differences between parties to be decided by opinion of majority.

AGREEMENTS.

Expences.

any covenant, agreement, clause, matter, or thing herein contained, then and in such case, and as often as any such shall happen, the same shall be finally determined and settled by the vote or opinion of the major part of the said parties hereto for the time being, whose resolution or determination respecting the same, shall be binding and conclusive upon all and every other the parties and party interested in the question concerning which such dispute or difference of opinion shall arise or subsist. AND LASTLY, each and every of the said inhabitants, parishioners, and occupiers, parties hereto, do and doth firmly bind himself, herself, and themselves, and his, her, and their respective heirs, executors, and administrators, to the other and others of them, his, her, and their respective executors, administrators, and assigns, in the penal sum (1) of , for the due and faithful observance of all and every the covenants and agreements, clauses, matters, and things in these presents contained, according to the true intent and meaning of the same, to be so determined in case of dispute as hereinbefore mentioned. IN WITNESS, &c.

Penalty.

(1) Of penal sums, see *ante*, MOD. PREC. Vol. I. p. 15.

AGREEMENTS.

Expences.

No. XXXV.

**An Agreement between Assignees under a Commission of Bankrupt (or other Creditors or Persons) to bear the* Expences *of Suits in proportion to their respective Debts or other Interests.*

ARTICLES of agreement made this day of , in the year of our Lord . BETWEEN (*assignees*) of, &c. (assignees of or under a commission of bankruptcy issued against (*bankrupt*) of, &c.), of the one part, and (*other creditors*) of, &c., creditors under the said commission, of the other part. Whereas a commission of bankruptcy was on or about the day of , issued out, and is still in force, against the said (*bankrupt*); AND WHEREAS, &c. (*recite shortly the proceedings under the commission*); And whereas there is now justly due from the said bankrupt's estate, to the said parties hereto, the several sums set opposite to their respective names, in the schedule hereunder written [and (*if so*) which said sums have been duly proved before the said commissioners]. AND WHEREAS divers actions or suits have been, [*or* are expected to be] instituted against [*or* are intended to be instituted by] the assignees (*or other parties*), in the prosecuting [*or* defending] which said suits or actions various sums of money may be expended or obliged to be paid by the said (*assignees*) as plaintiffs [*or* defendants] therein. And whereas the said suits or actions having been instituted *or* defended with the privity and consent of the said (*other parties*), they have severally agreed to bear and defray an equal and proportionate part thereof. NOW THESE PRESENTS WITNESS, that each and every of them the several parties hereto, for himself and for his executors and administrators, doth hereby covenant and agree with the other and others of them respectively, and his, her and their respective executors, administrators and assigns, in the manner following, (that is to say) that all costs, charges and expences whatsoever, which already have been, or which shall or may at any time or times hereafter be paid, disbursed or expended, in the suing forth or carrying on the said commission, or in instituting, prosecuting, defending or carrying on the said several suits, actions or proceedings so

WITNESS. Parties agree to bear equal proportion of expences.

AGREEMENTS.

Expences.

instituted, or which shall or may be instituted by or against them the said (*assignees*), on the part or behalf of themselves, and other the said parties hereto, shall be borne and sustained by all and every the said parties hereto, and their respective executors, administrators and assigns, rateably and proportionably, according to the amount of their several and respective debts, set opposite to their respective names in the schedule hereunder written. AND each of them the said parties secondly hereinbefore named doth covenant and propose to and with each of the said parties firstly hereinbefore named, that they the said parties secondly hereinbefore named, and their respective executors and administrators, shall and will at all times and from time to time, well and truly pay their said respective parts and proportions, unto them the said parties firstly hereinbefore named, and their respective executors, administrators or assigns, upon lawful demand being thereof to them respectively made; or otherwise effectually save harmless and indemnify them the said firstly named parties respectively, and their respective executors, administrators and assigns, from and against the same, any judgement, decree or order of any court of law or equity to the contrary in anywise notwithstanding. IN WITNESS, &c.

And indemnify each other.

SCHEDULE ABOVE REFERRED TO.

AGREEMENTS.
Freight.

No. XXXVI.

**An Agreement for* Freight *between a Master of a Ship or Vessel and a Merchant for the whole tonnage; and to execute a Charter-Party* (1).

Variations where the Agreement is for the part only of the ship's tonnage.

ARTICLES of agreement entered into the day of , in the year 18 . BETWEEN (*the master*) [or *if so*, between A. B. as and for, and on the part and behalf of (*master*)] of, &c., master of the ship or vessel, called the , of the one part, and (*merchant*) of, &c., of the other part. WHEREAS the said (*master*) hath agreed to let to freight, and the said (*merchant*) hath agreed to hire the said ship or vessel called the , [*or* so many tons of the said ship or vessel, &c.] of the burthen of tons, or thereabouts, upon the terms hereinafter mentioned. Now

WITNESS. The master agrees to let to freight.

WITNESS THESE PRESENTS, that the said (*master*), for the consideration hereafter mentioned, hath granted and letten to freight, and hereby doth grant and let to freight the said ship or vessel called (whereof is commander) unto the said (*merchant*) the lading of tons of such goods, wares and merchandizes (contraband only excepted) as the said (*merchant*), his executors, administrators, factors or assigns shall think fit, (being the whole [*or* part] of the said ship's tonnage) at the sum of £ per ton for freight; the said goods to be laden on board the said ship or vessel, at within days next after the date hereof [*or* next after the said ship or vessel shall be capable to stow or lay in the same there] whither the said ship is now bound, and to sail from thence directly to the port of , to discharge and end her said intended voyage; and he the said (*master*) shall and will pay all tonnage duty payable in respect thereof (2). And also shall and will

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Convoy.
Tonnage.

(1) If the ship is to sail with convoy, see *post.* No. xxxvii.

(2) The propriety of making the master covenant to pay the tonnage duty, arises from the 42 Geo. 3. c. 43. empowering the commissioners of customs to order a sale of the ship and cargo for payment, if not paid within a given time.

AGREEMENTS.

Freight.

within the space of from the date hereof, execute in due form of law, a charter party (*if the freight be of the whole ship, or* bill of lading, *if of a part only*) to the said (*merchant*) for performing the said voyage according to the true intent and meaning of these presents. AND shall and will well and truly keep, observe and perform all lawful port regulations, at and elsewhere, until full performance of the said contract on the part of him the said (*master*) (1). And in consideration of the premises, the said (*merchant*) for himself, his executors and administrators, doth covenant, promise and agree with and to the said (*master*), his executors, administrators and assigns, by these presents, that he the said (*merchant*), his executors, administrators, factors or assigns, shall or will lade or cause to be laden on board the said ship, at aforesaid, the said tons as aforesaid, and within the time aforesaid, well and truly pay or cause to be paid unto the said (*master*), his executors, administrators or assigns, at aforesaid, freight for each several tons thereof the sum of £ of lawful and current money of Great Britain (whether laden or not laden) at the times and in the manner following (that is to say) one moiety or half part thereof, within days next, after &c. &c. (*as may be agreed*) together with average (2) and primage as is accustomed. And &c. (*penal clause may be added*) (3). IN WITNESS, &c.

The merchant covenants to pay freight, &c.

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(1) By the 54 Geo. 3. c. 159. and other statutes, the commissioners of the Admiralty, or harbour masters, have authority to make such regulations as they may deem expedient, relative to the mooring, anchoring and placing of merchant and other vessels in harbours, &c., in order to their more convenient ingress, &c.; and as some of the penalties incurred by a disregard to these orders are payable by the owners, it is proper that they should be protected by a covenant of this kind, on the part of their employer the master.

To observe the port regulations.

(2) The master of a vessel is liable for the weighage duty, although he has no property in it; which makes the covenant proper for his indemnification. See Yarmouth v. Eaton, 3 Bur. 1402.

Weighage.

(3) See *ante*, pp. 65. 70.

AGREEMENTS.

Freight.

No. XXXVII.

**An Agreement for* Freight *between the Master of a Vessel and several Merchants for the whole ship's tonnage.*

Variations where the ship is to sail with convoy.

ARTICLES of agreement entered into the day of , in the year 18 . BETWEEN (*the master*) of, &c., master of the ship or vessel called the , of the burthen of tons, or thereabouts, now at , of the one part, and the several other persons who have signed and sealed these presents, merchants, of , of the other part. WHEREAS the said (*merchants*), parties hereto, have agreed to hire of the said (*master*), the aforesaid ship or vessel (whereof is commander) for loading at freight, to proceed from to (1). NOW THESE PRESENTS WITNESS, that the said (*master*) hath agreed, and hereby doth covenant and agree with the said several merchants, parties hereto, that the ship or vessel above named, shall sail with the first fair wind [or with the first convoy] (2) from , and then take in the several quantities of , or other goods, wares and merchandizes, for which the said merchants respectively have subscribed, or so shall subscribe with their names here underwritten, within days from the date hereof [*or if with convoy*, within the time of the convoy's stay there] and return with the said convoy to the river (or *as the case may be*) and deliver and end her voyage there, at the rate of per ton, for (*the kind of goods, &c.*) per ton for all other goods and merchandizes, accounting the tonnage thereof as usual with average and primage as accustomed. AND in consideration of

WITNESS.
Master agrees to let ship to hire.

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(1) And see *ante*, p. 146.

Convoy.

(2) This and the subsequent parts of the precedent, relative to the ship's sailing with convoy, is of course necessary only where hostilities have commenced or are apprehended, with some other country; and where they have actually commenced, it is always for the protection of the commerce of the country, made the subject of legislative provisions (see the act 43 Geo. 3. c. 57); but it is often made a stipulation between the parties themselves. See Cohen v. Hinckley, 1 Taunt. 253.

the premises they the said (*merchants*) and (*master*) do hereby jointly and severally covenant, promise and agree with the said (*master*), his executors, &c., to pay, &c. (*covenant to pay the freight*) (1) and also seal and execute one part of the said charter party granted to him the said (*master*). IN WITNESS, &c.

AGREEMENTS. *Freight.*

Covenant to pay, &c.

(1) See *ante*, p. 147.

AGREEMENTS.

Freight.

No. XXXVIII.

**An Agreement for* Freight (1) *between a Merchant having a Charter-party, or Bill of lading for a certain number of tons, and one who takes on hire a part of the same number.*

ARTICLES of agreement entered into this day of in the year 18 . Between (*one merchant*) of, &c., merchant of the one part, and (*another merchant*) of, &c., merchant of the other part.

Recital of charter-party.

WHEREAS (*master of the vessel*) master of the ship or vessel called the of the burthen of tons, or thereabouts, and about to undertake a voyage to , and thence to , hath, by charter-party [*or* bill of lading] dated the day of let unto the said (*first party*) tons of the said ship's tonnage for her said intended voyage, to be laden with within such time, and in such manner as in the said charter-party [*or* bill of lading] is mentioned, at the price of per ton, for freight, primage, and average, as accustomed, as by relation being thereunto had will appear. AND whereas the said (*second party*) has agreed with the said (*first party*) to take a part of the said tonnage at the same rate: NOW THESE PRESENTS WITNESS, that the said (*first party*) doth hereby agree to let unto the said (*second party*), his executors, administrators, and assigns, tons of the said tons, so to him the said (*first party*) letten by the said recited charter-party [*or* bill of lading] as aforesaid, to be laden with by the said (*second party*) within the time, in the manner, and at the rate per ton for freight which the said (*first party*) is, by the said charter-party, obliged to load and pay. AND the said (*second party*) in consideration of the premises, doth hereby for himself, his executors and administrators, covenant and agree with the said (*first party*), his executors, administrators, and assigns, that he the said (*second party*), his executors, administrators, factors, or assigns, shall and will, at aforesaid, lade and ship the said tons of on board the said ship or vessel, and unlade the same at aforesaid, within the respective times limited and appointed by the said charter-party [*or* bill of lading], and pay the

WITNESS.

First party agrees to let part of said tonnage to second party.

Covenant by second party to load and pay freight.

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(1) See the notes to the last precedent.

AGREEMENTS.
Freight.

freight for the same, and make all other payments to the said (*master*) master of the said ship or vessel at aforesaid, and perform all other matters and things which ought to be done and performed by the said (*first party*) at the times and in the manner in the said charter-party [*or* bill of lading] mentioned in respect thereof; and of and from the same respectively, and all actions, suits, costs, charges, and damages, by reason of, or in relation thereto, shall and will discharge and keep harmless him the said (*first party*), his executors, administrators, and assigns; and also will seal and execute unto the said (*master*) one part of the said charter-party [*or* bill of lading], so to be granted to him the said (*first party*) as aforesaid. IN WITNESS, &c.

AGREEMENTS.

Furnished house or apartments.

No. XXXIX.

An Agreement to take a Furnished House, *or Apartments.*

Parties.

ARTICLES of agreement entered into this day of , in the year of our Lord . BETWEEN (*the landlord*) of, &c., for himself, his heirs, executors and administrators, of the one part, and (*the tenant*) of, &c., for himself, his heirs, executors, and administrators, of the other part, as follow, that is to say, THE said (*landlord*) agrees to let, and the said (*tenant*) agrees to take a certain messuage (1) or dwelling-house, situated at , together with the fixtures, furniture, crockery, utensils and things particularly mentioned in the schedule thereof hereunder written, for the term of months, to commence from the day of now next ensuing, after the rate of the yearly rent (2) of £ of lawful money of Great Britain, by equal quarterly payments, the first payment thereof to be made on the day of , now next ensuing, [*or* (if so agreed), upon the said day of , (*being the time of the commencement of the tenancy*) in advance, and as or for the next

Landlord agrees to let furnished house.

For months at £ per annum

Apartments.

(1) If part of the house only be let, say,

"All those the first and second floors and front garret (*or as the case may be*) with the conveniences and appurtenances thereunto belonging, of the messuage or dwelling-house, now in the occupation of the said (*landlord*) situated at , as the same are furnished according to the schedule or inventory hereunder written, together with the use in common with the said (*landlord*) and his family, of the front kitchen of the said house, and the back wash-house and yard.

Rent reserved weekly.

(2) If it be intended that the rent should be reserved weekly, say,

"For the period or space of weeks, to commence from the day of , now next ensuing, at guineas per week, [*or* payable in advance on Monday in every week, *if so agreed*, and see *post.* p. 153. n. (1)].

AGREEMENTS.

Furnished house or apartments.

succeeding quarter; and so on until the commencement of the last quarter, next preceding the expiration of the said term, when such last quarter's rent shall be payable and paid (1)]. AND it is further agreed by and between the said parties hereto, that the said (*tenant*) shall and may, after the expiration of the said term of six months, hold and enjoy the said house, furniture and premises, from quarter to quarter, to be reckoned from the day of , at the same rent as aforesaid, until either of the said parties shall give three calendar months' notice to quit under his hand to the other of them. And that he the said (*landlord*) shall and will during the said term or time, keep the said messuage and premises in good tenantable repair, and replace such of the furniture as shall from time to time be destroyed or be damaged by reasonable use and wear thereof. AND it is also hereby agreed, that the said (*landlord*) shall have power to distrain (2) for the said rent, upon any of the goods or chattels of the said (*tenant*) as often as the same shall be twenty-one days in arrear. And that at the end of the said term of six months, or expiration of any such notice as aforesaid, as the case may be, he the said (*tenant*) shall and will leave the said fixtures and furniture, articles and things, mentioned in the said schedule, in as good state and condition as the same now are, reasonable use and wear thereof only excepted, and also replace and leave all such dishes, plates, china, glass and utensils, as shall be broken or in anywise damaged, of the same kind, pattern and value. IN WITNESS, &c.

And so on until three months notice by either party.

Landlord to keep the house in repair.

May distrain for rent.

Tenant to quit on notice.

Schedule or inventory above referred to.

Front room one pair—*one mahogany dining-table*—1 *Pembroke do. &c. &c.*

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(1) *As persons taking a furnished house or apartments, may not have sufficient property of their own upon the premises, to answer the amount of the rent reserved, the rent is sometimes made payable in advance, in which case it must be expressly made so payable during the whole of the term, as it will otherwise be construed to extend to the first quarter's rent only. Holland v. Salser, 2 Stark. 161, and see Spencer's ca. 5 Co. 17. a. 3.

Rent in advance.

(2) Before the case of Newman v. Anderton, 2 New. Rep. 242, it was generally conceived, that no distress could be had for rent reserved for a ready furnished house or lodgings, but in that case it was determined that distress may be had upon any goods of the tenant as well for furnished as for unfurnished premises, the whole rent being considered in law as issuing out of the land, although it may be increased by the value of other property demised with it.

Landlord may distrain for rent furnished lodgings.

AGREEMENTS.
Indemnity.

No. XL.

**An Agreement between Owners of a Ship and a Captain or Master leaving the ship, to* indemnify *him against Bills of Lading, &c. contracted by him for their use* (1).

ARTICLES of agreement entered into this day of , in the year of our Lord 18 . BETWEEN (*owners*) of, &c., owners of the ship hereafter mentioned, of the one part, and (*master*) of, &c., of the other part. WHEREAS (*master*) of, &c., master of the ship or vessel called the , of the burthen of tons, or thereabouts, now at , hath contracted and agreed with several persons for necessary work done to the said ship, and for goods and stores delivered for the said ship's use, and hath also signed and delivered out several bills of lading for sundry goods and merchandizes, now on board the said ship, and to be delivered at , or other parts whither she is now bound, at the freight therein mentioned, as by the said several bills, and the accounts thereof, signed by the said (*owners*) and hereupon indorsed, doth appear. AND whereas the said (*master*) with the consent of the said (*owners*), hath resigned the command of the said ship as master, and delivered or agreed to deliver the possession thereof to such person as the said owners have appointed, or may appoint, to succeed him as master thereof. Now

WITNESS. Owners covenant with master.

WITNESS THESE PRESENTS, that they the said (*owners*), for themselves severally and respectively, and for their several and respective executors and administrators, but not jointly, nor any one of them for the other, nor for the acts or deeds of the other, do hereby covenant, promise and agree to and with the said (*master*), his executors and administrators, in the manner following, that is to say,

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Ship master.

(1) As the contract of agents, not within the scope of their delegated authority, relative to the affairs of their principal, are personally binding upon themselves, an indemnity of the above kind is rendered necessary for the master's security. See Garnham v. Graham, 4 Barn. & Ald. 352. 1 Stark. 490.

AGREEMENTS.

Indemnity.

that each of us respectively, our respective executors and administrators, according to our several parts of and in the said ship by us severally subscribed with our names hereunto, shall and will pay or cause to be paid, our respective proportions of the several bills delivered and mentioned in the indorsement hereon, and by us severally subscribed, for work done, and goods and stores delivered for the said ship's use for her said intended voyage, and that of each of us, our respective executors and administrators, will at all times hereafter, save and keep, harmless and indemnified, the said (*master*), his executors and administrators, and his and their goods, chattels and estate, from and against our respective proportions of the said bills, and also of and from the said several bills of lading so by him the said (*master*), signed and delivered for goods and merchandizes, received or to be delivered on board the said ship, and from and against all actions, suits, costs, charges and damages whatever, which shall or may be commenced, prosecuted, recovered or awarded against him or them, or which he or they may sustain, or be put or be liable unto, for or concerning the same. IN WITNESS, &c.

INDORSEMENT

ABOVE REFERRED TO.

AGREEMENTS.
Journeymen, &c.

No. XLI.

An Agreement between a Master and a Journeyman, *Shopman, or hired Servant.*

ARTICLES of agreement made the day of in the year between (*the master*) of, &c., of the one part, and (*the journeyman*) now about to be resident with the said (*master*), of the other part.

Whereas the said (*master*) has agreed to receive the said (*journeyman*), and the said (*journeyman*) hath agreed to serve the said (*master*) as his journeyman or shopman, for the salary or wages of , and other the emoluments hereafter mentioned: Now WITNESS THESE PRESENTS, that he the said (*journeyman*) for the considerations hereafter mentioned, doth covenant, promise, and agree, with and to the said (*master*), his executors, administrators, and assigns, by these presents, in manner following (that is to say) THAT he the said (*journeyman*) shall and will become servant unto the said (*master*), his executors, administrators, and assigns, in the capacity of journeyman or shopman, in his said trade or business of , from the date of these presents, for and during the full end and term of now next ensuing (determinable nevertheless as hereafter mentioned), and at all times, and from time to time, diligently and faithfully serve him and them, according to the best and utmost of his power, skill, and knowledge, in the said trade or business, and in all things whatsoever in any wise relating thereto, and obey and execute the orders and directions of him and them therein; and shall not nor will divulge or make known the secrets of the said (*master*), whether in or relating to the said trade or business, or his family, or other concerns whatsoever; and shall and will be true, just, and honest to the said (*master*), his executors, administrators, and assigns, in all matters and things whatsoever; and shall and will, during the said term, keep just, true, and concise accounts in the books of the said (*master*), to be kept for that purpose, of all goods and merchandize bought and sold, and monies paid and received, and of all other matters and transactions whatsoever relating to the business of the said (*master*), which shall come to his hands, or be committed to his care, management, or

WITNESS. Journeyman covenants to serve faithfully.

Not divulge secrets.

Be true and just.

Keep accounts.

AGREEMENTS.

Journeymen, &c.

Pay over monies received.

disposal; and also from time to time pay over unto the said (*master*), his executors, administrators, and assigns, all monies which he shall receive of or belonging to, or by the order or direction of the said (*master*), without embezzlement, fraud, or delay, when and as often as he shall be thereto required. AND the said (*master*) doth hereby, for himself, his executors, and administrators, covenant, promise, and agree with and to the said (*journeyman*), his executors and administrators, that he the said (*master*), his executors and administrators, shall and will, at all times during the said term of (determinable as hereafter mentioned), find and provide unto and for him the said (*journeyman*), in the dwelling-house of him the said (*master*) good and wholesome meat, drink, and lodging, and also well and truly pay unto him the said (*journeyman*), his executors or administrators, the salary or wages of per annum of lawful current money of Great Britain, by equal ly payments, and shall and will from time to time allow and repay to the said (*journeyman*) all reasonable expences which shall be incurred by him, in or about the business or concerns of him the said (*master*), his executors, administrators, or assigns. AND each of the said parties doth covenant and agree with the other of them, that if the said (*master*) shall be desirous to part with the said (*journeyman*) after the expiration of , to be computed from the date hereof, or if the said (*journeyman*) shall be desirous of quitting the said (*master*) after the expiration of the same period, in either of the said cases the said party so desirous to part with or quit the other of them, shall and will give days' notice in writing of such desire, before the end of the said term or period; and upon such notice being given by either of the said parties, these presents and the agreement hereby entered into by them the said parties shall, at the expiration of the said notice, cease and be void. IN WITNESS, &c.

Master covenants to pay wages, &c.

Agreement to be dissolved on notice.

AGREEMENTS.
Mariners.

No. XLII.

*An Agreement between a Master and Mariners of a Coasting Vessel.

In pursuance of an act of parliament, passed in the thirty-first year of the reign of King George the Third, intituled, "An Act for the better regulation and government of seamen employed in the coasting trade of this kingdom" (1), it is agreed, by and between the master and seamen or mariners [being all British subjects] of the ship or vessel called the whereof is master, now lying in the port of , and bound from thence to the port of , that in consideration of the monthly or other wages against each seaman's or mariner's name hereunto respectively set, they the said seamen or mariners shall and will duly, diligently, and faithfully serve for the time or voyage, and in the quality or situation against each seaman's or mariner's name hereunder respectively written; and the said master doth hereby agree with and hire the said seamen and mariners accordingly; each and every party hereto being subject to all and every the rules, regulations, penalties, and directions in the aforesaid act mentioned. In witness whereof we have each and every of us affixed our hands, the month and day against our names respectively hereunder written.

Mariners will perform voyage

and obey rules.

Signatures by Table, as post, p. 160.

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31 Geo. 3. c. 39. (1) By this act the master of a vessel of 100 tons, or upwards, trading coastwise, is not to proceed on a voyage without entering into the above agreement, on the penalty of £5 for each seaman or mariner so carried to sea contrary thereto; and mariners are to sign the same at the time of entering; and the master and mariners are also respectively subject to every other regulations mentioned in the act, and which are usually subjoined to the agreement.

N. B. This agreement is exempted from stamp.

No. XLIII.

An Agreement between a Master and Mariners *to perform a Voyage to Foreign Parts.*

IT IS HEREBY AGREED, BETWEEN the master, seamen, and mariners of the ship now bound for the port of and whose names are entered in the schedule or table hereunder written, as follows, that is to say, the said (*master*) doth hereby agree with and hire the said seamen and mariners for, and they the said seamen and mariners do hereby agree to undertake the said voyage at such monthly wages as are set against their respective names in the said schedule or table, to be paid pursuant to the laws of Great Britain; and they the said seamen and mariners do hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said ship, and the boats thereunto belonging, as become good and faithful seamen and mariners, and at all places where the said ship shall put in or anchor during the said voyage, do their best endeavours for the preservation of the said ship and the cargo therein, and not refuse or neglect doing their duty by day or night; nor shall go out of the said ship on board any other vessel, or be on shore under any pretence whatsoever, without leave first obtained of the captain or commanding officer on board; and that in default thereof, they will submit to the penalties mentioned in the act of parliament made in the second year of the reign of King George the Second, &c. intituled, "An act for the better regulation and government of seamen in the merchants' service (1); AND will further, in case they shall leave or desert the said ship, without the master's consent, till the aforesaid voyage be ended, and the ship discharged of her loading, consent to forfeit and lose all wages which may at such time be due to them;

To obey officers.

Under penalties.

(1) If the voyage is to be performed to the West Indies, add, West Indies.

"And the act passed in the thirty-seventh year of the reign of King George the Third, intituled, 'An act for the preventing the desertion of seamen from British merchants' ships trading to his Majesty's colonies, and plantations in the West Indies."

AGREEMENTS. *Mariners.*

together with all their goods, chattels, and effects on board, renouncing by these presents all right, title, demand, and pretension thereunto respectively for ever. And also that eight and forty hours' (1) absence without such leave as aforesaid, shall be deemed such desertion as to render them liable to the penalties above mentioned. AND further, every lawful command which the said master or officers shall issue for the government of the said vessel, or suppressing of immorality and vice, shall be by them respectively strictly complied with, under the penalty of the person or persons disobeying or disregarding the same being liable to the like forfeiture as aforesaid. AND it is further agreed, that no officer nor seaman belonging to the said ship shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge and her cargo delivered. AND it is hereby further agreed, between the master and officers of the said ship, that whatever apparel, furniture, and stores each of them may receive into their charge belonging to the said ship, shall be accounted for on her return; and in case any thing should be lost or damaged through their carelessness or insufficiency, it shall be made good to the master and owners of the said ship, by such officer or seaman by whose means the same may happen. AND whereas it is customary for the officers and seamen on the ship's return home in the river, and whilst the cargo is delivering, to go on shore each night to sleep, greatly to the prejudice of such ship and freighters; it is therefore hereby further agreed, by and with the said parties, that neither officer nor seaman shall, on any pretence whatsoever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master shall think necessary in order for the preservation of the above. AND whereas it often happens, that part of the cargo of a ship is embezzled after being safely delivered into lighters, and as such losses must be made good by the owners of the ship, it is therefore further agreed, that whatever officer or seaman the master shall think proper to appoint, shall take charge of the cargo in the lighters, and go with it to the lawful quay, and there deliver his charge to the ship's husband or his representative, or see the same safely weighed at the king's beam; AND in consideration of his true fidelity, such officer or seaman shall be entitled to two shillings and sixpence each lighter, exclusive of his monthly pay; and should it so happen that lighters are detained any

Absence without leave.

Wages.

Stores.

Going on shore.

Embezzlement.

Detention at quay.

West Indies.

(1) In the West India service twenty-four hours is usually the time limited.

AGREEMENTS. *Mariners.*

considerable time at the quay before they can be unloaded, such officer or seaman so appointed shall, in that case, be entitled to two shillings and sixpence for every twenty-four hours, exclusive of his said monthly pay. That each seaman and mariner who shall well and truly perform the above-mentioned voyage (provided always, that there be no plunderage, embezzlement, or other unlawful acts by him committed on the said vessel's cargo or stores), shall thereupon be entitled to the wages or hire which may become due to him pursuant to this agreement. That for the due performance of each and every the above-mentioned articles, agreements, and as an acknowledgement of their being voluntary and without compulsion, and of no other clandestine means being used, the said parties have each and every of them subscribed their names, the month and day against their respective names as hereunder written.

Due performance

Place and Time of Entry.	Master and Men's Names.	Quality.	Witness to each Man's signing.	Pay in the River.		Wages per Month or by the Run for the Voyage.	Whole Wages.
				Whole.	Half.		
						£. s. d.	£. s. d.

AGREEMENTS.
Mariners.

No. XLIV.

An Agreement between Master and Mariners *in the West India Trade* (1).

IT IS HEREBY AGREED, BETWEEN the master, seamen, and mariners of the ship now bound for the port of and (*master or commander*), the master or commander of the said ship, as follows (1), that is to say, that in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set, they severally shall and will perform the above-mentioned voyage; and the said master doth hereby agree with and hire the said seamen and mariners for the said voyage at such monthly wages, to be paid pursuant to the laws of Great Britain; and they the said seamen and mariners do hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said ship or boats thereunto belonging, as become good and faithful seamen and mariners, and at all places where the said ship shall put in or anchor during the said ship's voyage, to do their best endeavours for the preservation of the said ship and cargo, and not to neglect or refuse doing their duty by day or night; nor shall go out of the said ship on board any other vessel, or be on shore under any pretence whatsoever, till the voyage is ended, and the ship discharged of her cargo, without leave first obtained of the master, captain, or commanding officer on board; and in default thereof they freely agree to be liable to the penalties mentioned in the act of parliament, made in the second year of the reign of King George the Second, intituled, "An act for the better regulation and government of seamen in the merchants' service;" and the act, made in the thirty-seventh year of the reign of King George the Third, intituled, "An act for preventing the desertion of seamen from British merchants'

Seamen to obey orders, &c.

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37 Geo. 3. c. 73. (1) By the 37th Geo. III. c. 73. sec. 11. it is provided that articles of agreement entered into between the master, seamen, and mariners of ships trading to the West India colonies, shall be to the above purport or effect.

AGREEMENTS. *Mariners.*

ships trading to his Majesty's colonies and plantations in the West Indies:" AND it is further agreed by the parties to these presents, that twenty-four hours' absence, without leave, shall be deemed a total desertion, and render such seamen and mariners liable to the forfeitures and penalties contained in the acts above recited; that each and every lawful command which the said master shall think necessary to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, be strictly complied with, under the penalty of the person or persons disobeying, forfeiting his or their whole wages or hire, together with every thing belonging to him or them on board the said vessel: AND it is further agreed, that no officer or seaman, or person belonging to the said ship, shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge, and her cargo delivered, nor less than twenty days, in case the seaman is not employed in the delivery: AND it is hereby further agreed between the master and officers of the said ship, that whatever apparel, furniture and stores, each of them may receive into their charge, belonging to the said ship, shall be accounted for on her return; and in case any thing shall be lost or damaged through their carelessness or insufficiency, it shall be made good by such officer or seaman by whose means it may happen, to the master and owner of the said ship: AND whereas it is customary for the officers and seamen on the ship's return home in the river, and during the time their cargoes are delivering, to go on shore each night to sleep, greatly to the prejudice of such ship and freighters; BE it further agreed by the said parties, that neither officer nor seaman shall, on any pretence whatsoever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master or commander of the said ship shall think necessary, in order for the preservation of the above: AND whereas it often happens that part of the cargo is embezzled after being delivered into lighters, and as such losses are made good by the owners of the ships; BE it therefore agreed, by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of the cargo in the lighters, and go with the same to the lawful quay, and there deliver his charge to the ship's husband, or his representative, or see the same safely weighed at the King's beam; and in consideration of his true fidelity, such officer or seaman shall be entitled to two shillings and sixpence each lighter, exclusive of his monthly pay; and should it so happen that lighters are detained a considerable time at the quay before they can be unloaded, such officer and seaman so ap-

Desertion.

Damage.

Indulgences.

Embezzlement.

AGREEMENTS. *Mariners.*

pointed shall in that case be entitled to two shillings and sixpence for every twenty-four hours, exclusive of his said month's pay; that each seaman and mariner who shall well and duly perform the above named voyage (provided always that there be no plundering, embezzlement, or other unlawful act committed on the said vessel's cargo or stores), shall be entitled to their wages or hire that may become due to him pursuant to this agreement: THAT for the due performance of each and every of the above named articles and agreements, and acknowledgement of their being voluntary and without compulsion, or any other clandestine means being used, the said parties have hereto subscribed their names, and the day and year set opposite to their respective names.

Table of Names, &c. to be underwritten as ante, No. XLIII. p. 161.

No. XLV.

Agreement between Merchants *for the Sale and Delivery of Goods and Merchandise on the arrival of the ship in the port, and the Purchase Money being paid* (1).

MEMORANDUM of an agreement made this day of in the year 18 . BETWEEN (*vendor*) of &c. of the one part, and (*vendee*) of &c. of the other part, as to the sale and purchase respectively of certain goods and merchandize, of or under the orders of the said (*vendor*) now in or proceeding to the River Thames (*or as the case may be,*) and hereinafter named, as follows: that is to say: The said (*vendor*) for himself, his executors and administrators, doth hereby promise and agree with and to the said (*vendee*), his executors, administrators, and assigns, that he the said (*vendor*) shall and will deliver, or cause to be delivered unto the said (*vendee*), his executors, administrators, or assigns, in the River Thames, freight free, and clear from damage weight of of the several sorts, and agreeable to the several patterns hereunto annexed or underwritten, at the several prices or sums of £ for &c. the price or sum of £ for &c. the same respectively being paid for on such delivery in money or goods to be approved of by him the said (*vendor*). AND the said (*vendee*) for himself, his executors, administrators, and assigns, doth hereby promise and agree, with and to the said (*vendor*), his executors and administrators, that he the said (*vendee*), his executors, administrators, or assigns, shall and will, upon notice to him or them given by the said (*vendor*), his executors or administrators, of the said ship, goods, and merchandize, being arrived in the River Thames, and in

Vendor agrees to sell and deliver.

Vendee agrees to pay.

(1) The student is not to imagine that the following precedent is in the form of a *memorandum*, instead of *articles of agreement*, as in the preceding forms, on account of the subject-matter of the agreement requiring this particular form: all the forms usually adopted are equally valid and proper (subject to the remarks in the Introductory Essay), and the variations in this respect found in the present work, are to be considered as accidental, and without view to any particular design or object.

Memorandum.

AGREEMENTS. *Merchants.*

the wharf of , receive, or cause to be received, the same from on board such ship, and shall and will well and truly pay, or cause to be paid unto the said (*vendor*), his executors or administrators, so much lawful money of England, or bills to be approved as aforesaid, as the same shall amount unto, at the rates or prices aforesaid, and shall and will also bear, pay, and discharge, all the custom-duties and other charges to be paid for or in respect of the said goods and merchandize, after their arrival in the said river, freight only excepted. IN WITNESS, &c.

Patterns above referred to.

No. XLVI.

**An Agreement between* Merchants *relative to their being equal Proprietors as to gain or loss, in Merchandize to be purchased by order.*

ARTICLES of agreement entered into this day of in the year of our Lord BETWEEN A. B. (*one merchant*) of, &c., of the one part, and (*other merchants*) of, &c., of the other part. WHEREAS the said parties hereto have agreed to purchase, at their joint or common risk in the proportions hereinafter mentioned, bales of cotton (*or as the case may be*) at and the said at and by the mutual request and direction of all the said parties, hath given orders to at for the purchase thereof accordingly, and to ship and consign the same to the said at in England: NOW THESE PRESENTS WITNESS, that all and every of the parties hereto (signified by their respective names and seals hereunto put and subscribed for themselves and himself, and their and his executors, administrators, partners, and assigns) do and doth hereby covenant, agree, and declare, to and with all and every the others and other of them respectively, their and his executors, administrators, partners, and assigns, as follows; that is to say, that they the said parties respectively, and their respective executors, administrators, and assigns, are and shall and will be concerned and interested in the said goods, wares, and merchandize so ordered by the said to be purchased and consigned as aforesaid, and in all other goods, wares, and merchandize which shall at any time or times be by him ordered, or purchased, by or with the consent of the others of them the said parties hereto, (to be testified in writing under their respective hands,) and consigned as aforesaid, (and which shall be accordingly bought and so consigned,) in and according to the proportion following, (that is to say) the said in one full part thereof, the said in part thereof, and the said, &c. &c. And that they the said parties respectively, and their respective executors, administrators, and assigns, shall and will pay, or cause to be paid, their respective full and pro-

Recital.

WITNESS.

The parties mutually covenant.

To share and pay equal parts of profit and loss.

AGREEMENTS. *Merchants.*

portionate parts or shares of the same goods, wares, and merchandizes, and of the prime costs, commissions, customs, and other necessary, proper and reasonable charges, expences, and disbursements incurred for or on account thereof, and shall and will sustain, bear, and be liable to the accidents, charges, and risks incident to the same, in the same or like proportions; so always nevertheless and it is hereby agreed and declared, that the said parts or proportions, whether as to profit or loss, shall be had and holden by the parties as in severalty and in common, and not as in joint-tenancy or as copartners in trade, and that no right, benefit, or advantage of survivorship shall be had or taken by or between them, in case of the decease of any or either of them, but the said respective shares and proportions shall in such case go and belong to their own respective executors, administrators, or assigns. IN WITNESS, &c.

No survivorship.

No. XLVII.

An Agreement between Tradesmen relative to the size of Measures, *&c.* (1) *to be used in their Business.*

ARTICLES of agreement made this day of , in the year of our Lord 18 , BETWEEN the several persons whose respective names and seals are hereunto set and affixed, traders or dealers in the business of as follow; WHEREAS many disputes and differences have arisen between persons trading and dealing in the said trade or business of , and others connected with them therein, concerning the size and bigness of the measure or basket made use of in buying and selling the articles used in the said trade or business; AND whereas it is expedient and for the benefit of the public, that such disputes and differences should be put an end to; AND it was therefore resolved and agreed at a meeting of persons interested in the said trade or business, holden on the day of last past, that the basket [*or as the case may be*], for the future to be made use of to measure and ascertain the quantity of, &c., should be of the size, contents, and dimensions following, that is to say, being a round basket feet diameter at the top, feet diameter in the middle or bulge, and feet diameter at the bottom, and feet in depth or height under the border, and of no other size, content, or dimension whatever: NOW THESE PRESENTS WITNESS, that in consideration of the aforesaid premises, and in pursuance of the said resolutions and agreement, all and every of the persons parties hereunto, do and doth for themselves and himself severally and respectively, and for their several and respective executors and administrators (but not jointly or any one or more for the other or others of them, their or his acts or deeds, or executors and administrators), covenant,

Recital.

WITNESS.
Parties mutually covenant not to use any other measure.

(1) The measures as well as weights of various articles of trade are regulated by Act of Parliament, but there are many others to which no legislative provisions have been extended, and are therefore left to the discretion of the trade itself; the draft from which the above form was printed, was prepared for an associated body of traders in leather, but may easily be adapted to a similar agreement between other trades.

AGREEMENTS. *Measures.*

promise, and agree with and to the others and other of them, their and his respective executors and administrators, that they the said parties hereunto any or either of them, (so covenanting separately as aforesaid) shall not nor will at any time or times hereafter, by themselves or himself, or by or through his or their respective agents, factors, servants, or others, buy, sell, contract or agree, either for his or their own respective use or benefit, or the use or benefit of any other person or persons whomsoever, any quantity of in or by any other basket or measure than of the size or dimensions heretofore described and set forth, and that the same shall from henceforth remain and continue and be the only standard size basket or measure wherewith to buy, sell, and measure such as aforesaid, without any enlargement, diminution, or other alteration whatsoever. AND for the due and true performance and observance of all and every the covenants, articles, and agreements herein contained, each of the parties hereto respectively doth bind himself, his executors and administrators, to the other and others of them respectively, his and their executors and administrators, by these presents, in the sum of £ by way of damages (1) liquidated and agreed upon between them, and to be recovered by any or either of them, for and on behalf of themselves or himself and the other or others of them, save only the party or parties against whom the same shall be so recovered. IN WITNESS, &c.

Penalty.

(1) See *ante*, pp. 65. 70.

No. XLVIII.

**An Agreement for regulating the rate of* Interest *to be paid by Incumbents on* Mortgages *made of their Benefices* (1) *under an Act of Parliament.*

WHEREAS in the year the Rev. A. B. Clerk, rector [vicar *or* curate], of the parish church [*or* curacy *or* chapelry],

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(1) The act of 17 Geo. III. c. 53 (explained by 21 Geo. III. c. 66), having empowered incumbents of livings to borrow money, by way of mortgage, upon the security of their benefices, for the purpose of building a convenient house, or residence, the act of 4 Geo. IV. c. 89, in further explanation and amendment of the first mentioned act, authorizes incumbents who have mortgaged their benefices under those acts, for the amount of two years of the net income, to lay the value of such benefices before the ordinary; upon which, the act declares, sec. 1. that the incumbent of such living or benefice, and the mortgagee or mortgagees thereof, may, with the consent of the ordinary and patron, agree that the yearly payments in discharge of the principal money secured by the mortgage of such living or benefice, and to become due after such agreement, shall be made at the rate of £5 per cent. or £10 per cent. per annum, as the case may require, according to the directions of the former acts and that act, on the sum which two years' net income and produce of the said living or benefice shall appear to amount unto, and every such agreement shall be valid and effectual; and the mortgage made of every such living or benefice shall remain in force as a security for the yearly payments thereby agreed to be made, as well as for payment of the interest arising on such mortgage, and with all the powers and remedies for enforcing the same given by the former acts, until the money borrowed, and the interest, and also all costs occasioned by the non-payment thereof, shall be fully paid, in like manner as if such yearly payments had been mentioned in the said mortgage. 4 Geo. 4. c. 89.

Sec. 2. That every such agreement shall be in writing, under the hands of the ordinary, patron, incumbent, and mortgagee, or the common seal of such of them as shall be a body corporate aggregate; and in case any such agreement shall relate to any chapelry or perpetual cure, the incumbent whereof shall be nominated by the rector or vicar, such rector or vicar shall be required to be a party to the agreements, together with the patron.

Sec. 3. authorises the governors of the Bounty of Queen Anne, to make such agreements; and also, sec. 7. to reduce the rate of interest on mortgages made to them, if it appear to the governors to be fit and proper; and also the Colleges and Halls in the universities of Oxford and

AGREEMENTS. *Interest Money.*

of in the county of and the diocese of the Bishop of and under the jurisdiction of the said bishop [*or such other ecclesiastical person or corporation as shall be ordinary*], as ordinary, by virtue and pursuant to the directions of an act of parliament passed in the 17th year of the reign of his majesty King George the Third, intituled, "An act to promote the residence of the parochial clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses and other necessary buildings and tenements for the use of their benefices," obtained the consent of the said ordinary and of the patron of the said church [*or* curacy *or* chapelry], to borrow and take up at interest, on mortgage of the glebe, tithes, and emoluments of the said living, the sum of £ , being the amount of two years' net income and produce of the said living, as then estimated and proved in the manner by the said act directed; and the said sum of £ was advanced by C. D., and a mortgage of the glebe, tithes, and emoluments of the said living, by indenture bearing date the day of , was duly made and executed to him for securing the repayment thereof, with interest at the rate of £ per cent. per annum, by yearly payments, according to the directions of the said act, and of another act passed in the 21st year of his said Majesty's reign, to explain and amend the same: AND whereas the several yearly payments which have become due upon the said mortgage, up to and including the day of last, together with all interest arising upon the said mortgage to that time, have been discharged, and there now remains due on the security of the said mortgage, the principal sum of £ , with interest thereon, from the said day of [*if the incumbent entering into the agreement is a successor of him who made the mortgage, or the mortgagee is representative or assignee of him to whom the mortgage was made, the facts are to be here stated in proper recitals, and the proper parties are to be named in the subsequent parts of the agreement, instead of the parties to the mortgage*]: AND whereas the said A. B. pursuant to the directions of an act passed in the 5th year of the reign of his majesty King Geo. IV. intituled [*set forth the title to*

Cambridge, and for all other corporate bodies, if it appear to them fit and proper so to do.

Sec. 4. directs that a copy of every agreement shall be registered in the office of the registrar of the bishop or ordinary; and the registered copy, or a copy thereof certified under the hand of the registrar to be correct, shall be legal evidence, in case such agreement be lost or destroyed.

Sec. 5. exempts this agreement from stamp.

this act], has laid before the ordinary of the said living a just and particular account in writing, signed by him, and verified as by the said last-mentioned act is required, of the present income or produce of the said living, and of the outgoings therefrom; and the said ordinary has caused enquiry to be made of the truth of the said account, and the result of the said enquiry to be certified to him as by the said act required; and according to the said account and the certificate returned to the said ordinary, the net income and produce of the said living appears now to amount to the sum of £ , and therefore two years' net income and produce thereof will amount to the sum of £ and no more: AND whereas the said C. D. is willing to accept such reduced yearly payments in discharge of the principal money remaining due on the said mortgage, as by the said last-mentioned act authorized and herein-after mentioned; NOW IT IS HEREBY AGREED by and between the said A. B. and C. D. with the consent of the said ordinary, and of the patron [*or* patrons] of the said church [*or* of the rector or vicar of the parish church of , who is entitled to the nomination of the curate of the said curacy or chapelry of , and the patron of the said parish church, *or if any other person or persons shall according to the act be required to act for the patron, such person or persons shall be named with a proper description*], testified by the said ordinary and patron signing this agreement [*or if either of them shall be a body corporate aggregate, then by the said ordinary or* [*patron*] *signing, and the said patrons (or ordinary) causing their common seal to be affixed to this agreement;*] and by virtue of the powers of the said last-mentioned act of parliament, that the yearly payments in discharge of the said sum of £ remaining due on the said mortgage as aforesaid, shall be made at the rate of £5 per cent, or £10 per cent. as the case may require, according to the directions of the said several acts of parliament, of the said sum of £ , the amount of two years' net income and produce of the said living, according to the late account and certificate herein-before mentioned; and the said mortgage of the said living is, pursuant to and by virtue of the said last-mentioned act, to be and remain in force as a security for the yearly payments hereby agreed to be made, as well as for payment of the interest arising on the said mortgage, and with all the powers and remedies for enforcing the same given by the said first-mentioned act, until the money borrowed on the said mortgage, and all interest for the same, and also all costs and charges which shall be occasioned by the non-payment thereof shall be fully paid and discharged. Dated, &c.

Mortgagor and mortgagee agree that debt shall be liquidated by yearly payments of £ per cent.

AGREEMENTS.

Pay Expences.

No. XLIX.

**Agreement on the Sale of a Ship and Freight for the Purchaser to pay the previous* Expence *of Outsets, &c.*

WHEREAS A. B., of, &c., by writing or bill of sale under his hand and seal, bearing even date herewith, for the considerations therein mentioned, did sell to C. D., of, &c., one full and equal thirty-second part of and in all that ship or vessel called the of the burthen of tons, or thereabouts, now, &c. AND whereas, before and at the time of the sealing the said recited bill of sale, it was agreed between the said A. B. and C. D. that the said C. D., his executors and administrators, should pay all or any debts or sums of money which might be owing and unpaid on account of the said part of the said ship, for her outset for any former voyage or voyages, or otherwise, if any such should be due. Now therefore the said C. D., in consideration of the said sale so to be made, and in pursuance of the said agreement, doth hereby, for himself, his executors and administrators, covenant, promise, and agree, to and with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors and administrators, shall and will bear and pay all such debts, sum and sums of money which, at or before the day of the date hereof, are or may be due, owing, and unpaid on account of the said thirty-second part of the said ship to him sold as aforesaid, for or on account of the said ship's outset for any former voyage or voyages, or otherwise howsoever, and thereof and therefrom, and from all actions, suits, payments, charges, and damages by reason thereof, shall and will, at all times hereafter, save and keep harmless and indemnified the said A. B., his executors and administrators, and his and their goods and estates. IN WITNESS, &c.

Agreement to pay previous expences.

No. L.

**An Agreement between Merchants or Owners of a ship and cargo with another Owner to* pay their proportion *of Bills drawn by the Captain or Master.*

ARTICLES of agreement entered into this day of in the year of our Lord BETWEEN us whose hands and seals are hereunto subscribed, part owners of the ship or vessel called the of the burthen of or thereabouts, whereof is master of the one part, and A. B., of, &c. part owner also of the said ship, of the other part. WHEREAS the said ship is bound on a voyage to and it has been agreed by and between the several parties hereto, that the said (*master*) shall draw upon the said A. B. for all sums which may be necessary for the use of the said ship during his said voyage, and until his return to the port of NOW WITNESS THESE PRESENTS, that we the said parties hereunto first named, and each of us do and doth, for ourselves and himself severally and respectively, and for our respective executors and administrators, but not jointly, nor any one or more of us for the other or others, nor the acts, deeds, or defaults of the executors or administrators of the other or others of us, hereby covenant, promise, and agree with and to the said A. B., his executors and administrators, that each of us respectively, our respective executors and administrators, according to our several parts of and interests in the said ship or vessel, as severally acknowledged by our names hereto subscribed, shall and will pay, or cause to be paid, unto the said A. B., his executors or administrators, our several shares and proportions of all and every sum and sums of money which shall become due and payable upon or by virtue of any bill or bills which shall or may be drawn upon the said A. B. by the said (*master*), or other the master for the time being of the said ship or vessel during her said intended voyage, and accepted by him the said A. B. without fraud or covin, for or on account of the said ship or vessel, or the owners thereof, when and as any such bill or bills shall from time to

Recital.

WITNESS.
Parties agree to pay equal proportions of bills to be drawn.

AGREEMENTS. *Pay Bills.*

time become payable, and demand thereof to us respectively made: AND we do severally authorize the said A. B. to accept all or any such bill or bills which the said (*master*) shall draw upon him for or on account of the said ship or vessel, or the owners thereof, and which the said A. B. shall in his discretion think just and fit, and proper to be accepted. IN WITNESS, &c.

No. LI.

An Agreement for a Deed of Partition *between* Joint-tenants *of Freehold lands* (1).

Variations where the parties are Tenants in common, or Coparceners. Also where the premises are Copyhold or Leasehold. And where either of the parties are married.

ARTICLES OF AGREEMENT, entered into this day of , in the year of our Lord BETWEEN A. B. of, &c. for himself, his heirs, executors, and administrators, of the one part, and C. D. of, &c. for himself, his heirs, executors, and administrators, of the other part, as follow, that is to say: WHEREAS the said A. B. and C. D. are seised to them, and their heirs, in

Parties.

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(1) The obstacle which an undivided interest with others, in an estate, occasions to its alienation, and other inconveniences attending it, particularly where it is holden in joint-tenancy, to which survivorship is incident, make it very desirable that a partition should be effected as soon as possible, and where this cannot be immediately perfected, an agreement may be entered into between the parties for that purpose, and which in the case of a *joint*-estate, by discharging the unity of interest, is alone sufficient in equity to prevent the jus accrescendi; Co. Lit. 188. 193; Frewen v. Relfe, 2 Brow. Ch. Ca. 224; Browne v. Raindle, 3 Ves. Jun. 257. And on account of the inconveniences above alluded to, and see Haws v. Haws, 3 Atk. 524, as well tenants in common, as joint-tenants, are now by 31 Hen. 8. Cap. 1. and 32. ib. Cap. 2. (contrary to the ancient law; Lit. s. 290. 318; Co. Lit. 187. a.) compellable to make partition of their freehold lands, at the request of either party; and see Attorney-Gen. v. Vigor, 8 Ves. 282; Whaley v. Dawson, 2 Sch. and Lef. 372; but these statutes do not extend to copyholds; Gilb. Ten. 185; Co. Coph. s. 54; Rowden v. Malster, Cro. Car. 44; Scott v. Fawcett, 1 Dick. 293; and such partition will not be invalidated by the circumstance of the possibility of other persons (as after-born children) afterwards becoming entitled under the limitation by which the estate was created; Wills v. Slade, 6 Ves. 498.

Severance of joint estates desirable.

Joint tenants, &c. compellable to make partition.

Partition not invalidated by the possibility of future persons becoming entitled.

AGREEMENTS.
Partition.

joint-tenancy (1), in possession (2) of certain messuages, lands, and hereditaments, situated at , in the county of , under or by virtue of the last will and testament of E. F. late of, &c. deceased (3). AND WHEREAS the said (*joint-tenants*) have agreed to make such partition of the said estates, as hereinafter is particularly expressed or referred to (4). NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in order to the execution thereof, they, the said (*joint-tenants*) do for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, covenant, promise, and agree, to and with each other, and the heirs, executors, and administrators, of each other, that each of them, the said (*joint-tenants*), and their respective heirs and assigns, shall and will make, do, and execute, and join and concur in doing and executing, all such acts, deeds, con-

Agreement to make partition.

Parties will concur in effecting a partition.

Tenants in common.

(1) If the partitioners be tenants in common, say,

"WHEREAS, the said A. B. and C. D. are seised, or entitled to, in their, and each of their demesne, as of fee, of several and distinct undivided shares and interests, in the fee simple, as tenants in common, of certain messuages, lands, and hereditaments, situated at , under, or by virtue of a certain indenture of settlement, bearing date the day of , and made, or expressed to be made, between, &c.

Coparceners.

If the partitioners be coparceners, say,

"AND WHEREAS the said A. B. and C. D. are seised to them, and their heirs, in coparcenary, of certain messuages, lands, and hereditaments, situated at , in the county of , as descendants of , late of , deceased.

Reversion.

(2) A partition is equally capable of being made of a reversionary estate, as of one in possession. See Fearne, P. Wks. 243. If therefore the estate be in reversion, say,

"In reversion expectant upon the decease, or other sooner determination of the estate for life of (*the tenant for life.*")

Leaseholds.

(3) If the premises be leasehold, say,

"AND WHEREAS the said A. B. and C. D. are possessed of, or entitled, as joint-tenants, *or* tenants in common (*as the case may be*), to certain leasehold messuages, or tenements, and premises, situated at , in the county of , for a term of years, commencing from the day of ."

Wife, &c.

(4) If either of the parties have a wife living, see *variation post.* p. 180, n. *, which is also adapted to other circumstances.

AGREEMENTS. *Partition.*

veyances, surrenders (1), assignments (2), and assurances, as shall be requisite or proper, at their joint expense, according to the respective values of their estates and interests (3), for parting, severing, and dividing the several messuages, lands, and hereditaments, so devised to them, the said (*joint-tenants*,) by the hereinbefore in part recited will of the said E. F. deceased, in the manner following, that is to say: AND it is hereby declared and agreed, that the whole of the said messuages and hereditaments, situated at , shall belong to, and become the sole property of the said A. B. and that the whole of the said hereditaments and premises, at , shall belong to, and become the sole property of the said C. D. AND it is hereby further agreed, that it shall be referred to of, &c. for settling the equivalent (4), which ought to be paid, or made in money (5), or otherwise, by either of the said parties, to the other of them, for making the said hereditaments, at of equal value with the said hereditaments at aforesaid, to whose judgment and determination the said parties hereto shall and will stand and abide in all things. AND lastly, it is hereby declared and

All requisite assurances to be executed for that purpose.

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(1) If the lands be copyhold, no partition can be made without the license of the lord; Co. Lit. 59. a. n. (1) in which case add, Copyholds.

"By license of the lord or lady for the time being of the said manor."

(2) Joint tenancies of chattel interests are disapproved of by the courts of equity, as an inconvenient estate, Haws v. Haws, 3 Atk. 524; and therefore every separation of interest as by lease, Clerk v. Clerk, 2 Vern. 323; mortgage, York v. Stone, 1 Salk. 158; or covenant to sell, Browne v. Raindle, 3 Ves. 257; unless the parties be infants, or otherwise not sui juris, May v. Hook, cited Co. Lit. 246. n. (1); Ireland v. Rittle, 1 Atk. 541; Whalley v. Dawson, 2 Sch. and Lef. 372, is holden to work a severance; and courts of law now shew the same inclination, though joint tenancies in estates of inheritance were formerly favoured by the law as avoiding the multiplication of tenures, Fisher v. Wigg, 1 P. Wms. 21; Salk. 392; Partriche v. Powlet, 2 Atk. 55; Clinan v. Cooke, 1 Sch. and Lef. 35. Joint tenancies discountenanced both at law and in equity.

(3) The expence of a partition, unless otherwise agreed, was formerly, it is said, to be borne by all the parties equally, however unequal the amount or value of their shares. See Parker v. Gerard, Amb. 237; but it is now borne by the parties, in proportion to the value of their respective parts. Calmady v. Calmady, 2 Ves Jun. 568; Agar v. Fairfax, 17 Ves. 558.

(4) An agreement for a partition must be fair and reasonable, between the parties according to their respective interests, or it will be set aside in equity; Tristram v. Melhuish, 2 Eq. Ca. Ab. 56. pl. 4. Partition must be reasonable.

(5) Instead of a sum in gross, an annual sum may be paid by one to the other of the parties for owelty of partition, and such sum will belong to the executor and not to the heir; Hulbert v. Hart, 1 Vern. 133. Money for equality belongs to executors.

AGREEMENTS. *Partition.*

agreed, by and between the said parties to these presents, that all such other conveyances and assurances shall be made and executed by and between the said parties, and all other necessary parties, as by their respective counsel shall be advised, for effecting the said partition, as soon as conveniently may be after the execution of these presents, and for conveying, settling, and assuring (1), the said messuages and hereditaments, at , unto the said A. B. and his heirs, for an absolute estate of inheritance, or otherwise as he or they shall, for that purpose, direct, or appoint; and for conveying, settling and assuring the said messuages and hereditaments, at unto the said C. D. and his heirs, as or for a like estate of inheritance, or otherwise as he or they shall direct or appoint, in that behalf (2). IN WITNESS, &c.

Leaseholds.

(1) If the premises be leasehold, say,

"For vesting the said messuage, or tenement, and premises, at , in the said A. B. his executors, administrators, and assigns, for the remainder of the said term of years, which shall be then to come therein; and for vesting the said messuage, or tenement, and premises, at , in the said C. D. his executors, administrators, and assigns, for the remainder of the said term of years, which shall be then to come therein."

(2) An agreement to apply for a decree in Chancery, or Act of Parliament if requisite, to establish the partition, may be added here, as *ante*, No. I. p. 2.; XXX. p. 127.

Commissioners.

Variation where Partition is made by commissioners.

* AND WHEREAS the said , and his wife, and the said have mutually agreed to effectuate a partition of the said messuages, lands, and hereditaments, upon the terms and in the manner hereinafter mentioned. NOW THESE PRESENTS WITNESS, that the said , and his wife, do hereby agree with the said , and the said doth hereby agree with the said , and his wife, in manner following, that is to say, That a partition and division of all and singular the said messuages, lands, and hereditaments, into two separate allotments of equal value, or as nearly so as circumstances will permit, shall be made as soon as conveniently may be, by (*commissioner*) of, &c.; a commissioner nominated by and on the behalf of the said , and his wife, and (*another com-*

WITNESS. That partition shall be made by commissioners.

AGREEMENTS.

Partition.

missioner) of, &c., a commissioner nominated by and on the behalf of the said . AND that if the said commissioners should differ in opinion, touching the said intended partition, or the mode of carrying the same into effect, or touching any matter relating thereto, then, and in every such case, the subject matter of every such difference of opinion shall be reduced into writing, and shall be referred to an umpire to be named by the said commissioner, before they proceed on the said arbitration, or the valuation or arrangement for that purpose. AND that the determination or decision of such umpire upon the matter or matters so to be referred to him, shall be final, binding, and conclusive, both upon the said commissioners and upon the parties hereto. AND that when and so soon as such partition or division shall have been made, the said (*commissioners,*) or, in the case of their difference, the said umpire, shall decide which of the said allotments shall be taken in severalty by the said , and his wife, and which of the said allotments shall be taken in severalty by the said . AND that it shall be lawful for the said commissioners, or in case of their difference, the said umpire, to decide and determine whether any and what sum of money shall be paid for equality of partition, and by which of the parties such money shall be paid. AND that when it shall have been determined which of the said allotments shall be taken in severalty by the said , and his wife, and which of the said allotments shall be taken in severalty by the said , and whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid, the said parties respectively, and their respective heirs, appointees, or assigns shall, with all convenient speed, make, do, and execute all such acts, deeds, or assurances, as the counsel of the said parties respectively, or their respective heirs, appointees, or assigns shall advise or require, for the purpose of conveying and assuring such of the said allotments as shall have been decided, in manner aforesaid, to be taken in severalty by the said , and his wife, with their appurtenants, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the power, provisions, declarations, and agreements, in and by the said hereinbefore in part recited indenture of settlement, limited, expressed, or declared, of or concerning the said undivided moiety, hereditaments and premises, thereby granted and released, or as near thereto as the deaths of the parties and other circumstances will allow; and for the purpose of conveying and assuring such of the said allot-

And if they disagree the decision of their umpire to be final.

Commissioners or umpire to decide what allotment each party shall have.

And the equality of partition money.

Parties to execute mutual conveyances.

As to one moiety to uses &c. of settlement.

And as to other moiety to him in fee.

AGREEMENTS.
Partition.

ments, as shall have been decided in manner aforesaid to be taken in severalty by the said , his heirs and assigns, or to such uses, and in such manner, as he or they shall direct or appoint. AND that such provisions shall be made for the payment by the respective parties of their shares of the monies due, or to become due on the said mortgages respectively, as by the said commissioners or their umpire shall in that behalf be directed. AND it is hereby further agreed, that the said (*commissioners*) shall be, and they are hereby authorized to make a survey of the said estates, and to cause a map or plan to be drawn thereof, and that the costs, charges, and expences of preparing, engrossing, and executing this present agreement, or in anywise relating thereto, and of making such partition or division as aforesaid, and of making such survey, and such map as aforesaid, and all other costs, charges, and expences incurred or to be incurred in or about the said partition or division, or in anywise relating thereto (except the costs, charges, and expences of the respective conveyances of the allotments to be taken in severalty), shall be paid and borne by the said and , in equal proportions. AND that the expence of the conveyances of the allotment to be taken in severalty by the said , and his wife, shall be borne by the said (*husband.*) AND that the expence of the conveyances of the allotment to be taken in severalty by the said (*other party*), shall be borne by him the said (*other party*) AND it is hereby further agreed and declared, that the said commissioners, or their umpire, shall decide to which of the said parties the custody of the several title-deeds relating to the said hereditaments shall respectively belong, and by whom, and in what proportions the expences of any attested copies or covenants for production of deeds which may be necessary, shall be borne. That if either of the parties to the said intended partition should require an attested copy or attested copies of any of the title-deeds, or title-deed in the custody of the other party to the said partition, or to have a deed of covenant for the production of any such title deed or title deeds, then and in such case the expence of making such attested copy or copies, and the expences attending the framing, engrossing, and executing of such deed of covenant, shall be paid by the party requiring the same. AND for the due execution and observance of the agreements hereinbefore contained, on the part of the said and his wife, and the said (*other party*) the said and his wife, and the said (*other party*), do hereby bind themselves, their heirs,

Commissioners or umpire to decide who shall pay mortgage money.

Commissioners authorized to make a survey.

All costs of partition to be borne equally.

Each party to pay costs of his own conveyance.

Commissioners or umpire to decide who shall have the title-deeds.

Expences of attested copies, &c. to be paid by the requiring party.

Nomine pœnæ.

executors, and administrators, the one to the other of them, in the sum of pounds. AND for the due performance and observance of the agreement hereinbefore contained, on the part of the said , the said doth hereby bind himself, his heirs, executors, and administrators, to the said , his executors, and administrators, in the like sum of pounds. IN WITNESS, &c.

THE SCHEDULE

TO WHICH THE ABOVE AGREEMENT REFERS.

*** Other modern forms of Agreements for Exchanges may be found in 1 Pow. Prec. 389, 1 Bythe Prec. 193, *et seq.*

AGREEMENTS.
Postpone Sale.

No. LII.

An Agreement to Postpone *the Sale of a Ship (or other property* (1)*) which has been assigned in trust for sale,*

ARTICLES of agreement made and concluded this day of in the year , BETWEEN (*the owner being also a preceding mortgagor*) of, &c., of the first part (*trustees for sale*), of, &c., of the second part, and (*cestuique trusts or mortgagees*) of, &c., of the third part. WHEREAS &c., [*recite the deed of trust for sale and subsequent transactions and agreements,*]

Recitals.

WITNESS. That trustees agree to postpone sale on certain conditions.

NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in consideration of the matters and things aforesaid, they the said (*trustees*), by and with the privity and approbation of the said (*cestuique trust*), testified by his being party hereto, hereby for themselves severally and respectively, and for their several and respective executors and administrators (but not jointly), hereby covenant and declare to and with the said (*owner*), his executors, administrators, and assigns, that they the said (*trustees*), respectively, or their respective executors, administrators, or assigns, shall not nor will make sale of, or proceed to sell or dispose of the said ship or vessel (*or as the case may be*), so assigned or otherwise assured to them by the said in part recited indenture, or intended so to be, or any part thereof, or any of the [masts, sails, sail-yards, anchors, ropes, cords, cannons, guns, fire-arms, ammunition, provision, tackle, apparel, boats, oars, furniture, materials,] appendents or appurtenances whatsoever to the same belonging, nor shall nor will in anywise exercise or put in force the power or authority reserved or given to them by the said indenture, for selling or disposing thereof, or any part thereof, until &c. [*mentioning the time or event upon which the power of sale or disposition is to be exercised*], but shall and will permit and suffer the said

(1) Although the above form is adapted in particular to the postponement of the sale of a ship or vessel, yet it may be easily made suitable to the like object in regard to any other species of personal or even of real property.

ship or vessel to proceed upon its intended voyage to , without any hindrance or interruption whatsoever of or by them the said (*trustees*) respectively, their respective executors, administrators, or assigns. AND THESE PRESENTS FURTHER WITNESS, that for the considerations lastly aforesaid, he the said (*owner*), for himself, his executors, and administrators, doth hereby covenant, promise, and agree, with and to the said (*trustees*), and each of them and their respective executors, administrators, and assigns, that from and after the &c., [*the time or event to which the sale is postponed*], he the said (*owner*), his executors or administrators, shall not nor will prohibit, hinder, or in anywise prevent or impede, or attempt to hinder or impede the said (*trustees*) respectively, or their respective executors, administrators, or assigns, or any or either of them, from proceeding to the sale and disposition of, and actually selling and disposing of the said ship or vessel, with its appurtenances, or otherwise exercising the said right, power, or authority so given or reserved to him and them as aforesaid for that purpose; nor take or attempt to take any advantage whatsoever, of the deficiency or postponing the sale or disposition thereof, until the period or event lastly aforesaid in pursuance of these presents or otherwise, but shall and will permit and suffer them, or either of them, the said (*trustees*), or their respective executors, administrators and assigns, to make sale, and absolutely dispose thereof, together with all and singular the [masts, sails, sail-yards, anchors, cables, ropes, cords, cannons, guns, fire-arms, ammunition, tackle, apparel, boats, oars, furniture, materials] appendants and appurtenants whatsoever to the same belonging, and in as full and ample a manner, and as effectual to all intents and purposes, as if these presents had not been made. [AND also that in the mean time, and during such intended voyage, and until the return of the said ship or vessel, he the said (*owner*), his executors, administrators or assigns, shall not, nor will do or commit, or knowingly permit or suffer to be done or committed, any wilful damage whatsoever to the said ship or vessel, or any of the [masts, sails, sail-yards, anchors, cables, ropes, cords, cannons, guns, fire-arms, ammunition, tackle, apparel, boats, oars, furniture, materials,] appendants or appurtenants whatsoever to the same belonging or appertaining, or in any respect interrupt or disturb the said , as the attorney or agent of the said (*trustees*) in the possession thereof as aforesaid, but shall and will from time to time insure, or cause the same to be insured at the proper times of insurance for the same, at the sum and in the manner and form in the said in part recited indenture for that purpose contained; and shall and will do, or cause to be done the ut-

AGREEMENTS.

Postpone Sale.

FURTHER WITNESS.

Owner will not impede sale at time agreed upon.

AGREEMENTS.
Postpone Sale.

most in his power to preserve and keep the same ship and vessel with its appurtenants as aforesaid in good order and condition during the said intended voyage. AND also the said (*owner*), his executors, administrators and assigns, shall and will do the utmost in his and their power to make or cause to be made the said intended voyage as speedily as possible, and conduct and manage the said ship or vessel on its intended voyage, so that as little damage as possible may be done thereto, or to any of its [masts, sails, sail-yards, anchors, cables, ropes, cords, cannons, guns, fire-arms, ammunition, tackle, apparel, boats, oars, furniture, materials,] appendants and appurtenants, and shall and will use his utmost endeavours to procure the same ship or vessel with its appurtenants to return as speedily, and in as good order, plight and condition, as may be. IN WITNESS, &c.

AGREEMENTS.
Postpone Jointure.

No. LIII.

An Agreement for Postponing *a Jointure or other Charge upon Lands, to a Mortgage or other subsequent charge.*

ARTICLES of agreement indented, made, and entered into this day of in the year, &c., and in the year of our Lord BETWEEN (*the jointress*) of, &c. of the one part, and (*the mortgagee, or other subsequent creditor*) of, &c. of the other part; WHEREAS, &c. [*recite the settlement by which the jointure was created so far as relates to such jointure; the agreement for the loan by way of mortgage of the jointure lands; the agreement of the jointress to postpone the payment of her jointure to the interest of the mortgage debt, and the mortgage deed of even date:*] Recitals.

NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and for the better and more effectually securing the payment of the said sum of £ and interest to the said (*mortgagee*) at the time and in the manner aforesaid, she the said (*jointress*) for herself, her heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said (*mortgagee*), his executors, administrators, and assigns, that so long as the said sum of £ or any part thereof shall be due and owing, she the said (*jointress*) shall and will consent and agree that all interest and arrears of interest (1) of, for or in respect of the same, shall take place and have priority to, and be paid before her said jointure, or annual sum of £ so provided and made payable to her the said (*jointress*) and her assigns for the term of her natural life, as hereinbefore is mentioned, and of all and every the arrears and growing payments thereof now or hereafter accrued or to accrue; and that the payment of the same jointure, arrears, and growing payments respectively, shall from time to time be postponed, until the interest of the said sum of £ shall be fully paid and discharged, so as and in

WITNESS. Jointress agrees to postpone jointure to interest of mortgagee.

(1) Sometimes the jointure is required by the mortgagee to be postponed to the principal as well as the interest of the mortgage; but this, unless under particular circumstances, is unreasonable.

AGREEMENTS.

Poor.

No. LV.

**An Agreement at a Public Meeting for two or more Parishes, Townships or Places to unite in adopting the provisions of an Act of Parliament for uniting to provide an Asylum for the Poor* (1).

It is agreed at a public meeting held this day of , at , in the county of , pursuant to the directions of the said act, that the parish [*or* township] of [*as the case shall be*] shall from henceforth, in conjunction with the parishes or townships of and , [*as the case shall be*] adopt in all respects the provisions, rules, orders and regulations, and comply with all the requisites prescribed by the said act for parishes uniting for these purposes, and that a convenient workhouse and other buildings and necessary conveniences shall be immediately provided at or near , (2) and properly fitted up and accommodated for the purposes mentioned in the said act; and we recommend to the consideration of the justices of the limit wherein such workhouse will be situate, A. B., C. D. and E. F., as fit and proper persons qualified for guardians of the poor, and G. H., I. K. and L. M., as fit persons to be governors of the poorhouse for the said parish [*or* township *as the case shall be*], and do agree to allow the person who shall be appointed guardian a salary of per annum, for his trouble in executing that office, and to the person who shall be appointed gover-

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22 Geo. 3. c. 83. Uniting parishes, &c.

(1) By the act of 22 Geo. 3. c. 83. it is provided that where two thirds in number and value (according to the poor-rate) of the owners or occupiers of lands &c., within two or more parishes, townships or places, shall think fit to agree in the form or to the effect above expressed, to unite for the purposes of that act, such agreements shall be binding upon the said parishes if approved of under the hands of two justices of the peace, in the form given *post.* p. 194.

(2) By the act above cited it is declared that the agreement shall specify the place where the house or houses to be built shall be situated, and the terms upon which such agreement is made.

No. LIV.

**An Agreement at a Public Meeting for a Parish or Township to adopt the provisions of an Act of Parliament for the relief and employment of the* Poor (1).

It is agreed at a public meeting, duly holden this day of , at , in the county of , pursuant to the directions of an act made in the twenty-second year of King George the Third, for the better relief and employment of the poor. That the parish [*or* township] of , (*as the case shall be*) shall from henceforth adopt, in all respects, the provisions, rules, orders and regulations, and comply with all the requisites prescribed by the said act, and that our workhouse [*if there is one*] shall be immediately fitted up and accommodated for the purpose mentioned in the said act. [*If there is none*] We will forthwith provide a proper workhouse, either by erecting a new one, or hiring, altering and fitting up buildings suitable to the purpose, at some convenient place within our parish, &c. And we recommend to the consideration of the justices of and , as fit and proper persons for guardians of the poor, and and , as fit and proper persons for governors of the poor-house for the said parish, township, &c., [*as the case shall be*]. Given under our hands, &c.

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(1) By the act of 22 Geo. 3. c. 83. it is provided that where two third parts in number and value (according to the poor rate) of the owners or occupiers of lands, &c. within any parish or place, shall, at a public meeting held pursuant to the act, agree in the above form to adopt its provisions, they are authorized to nominate, for the approbation of the Justices of the Peace, three persons as guardians of the poor and three others as governors of the poor-house for such parish or place, with reasonable salaries to be allowed them. 22 Geo. 3. c. 83. As to guardians of poor.

AGREEMENTS. Poor.

No. LVI.

**An Agreement for uniting two or more Parishes or Townships for the purpose of providing a house, maintenance and employment for the* Poor, *pursuant to* 22 *Geo.* 3. *c.* 83 (1).

It is agreed this day of , by and between the guardians of the poor of the parishes of and , and of the townships of and , in the county of , (which maintain their own poor separate and distinct from the other parts of their respective parishes) whose names are hereunto subscribed pursuant to the opinion of two third parts in number and value as aforesaid, of the owners or occupiers of lands, tenements and hereditaments, assessed to the poor's-rates within such respective parishes and townships, at meetings duly held for that purpose, qualified according to the directions of the act passed in the twenty-second year of the reign of His Majesty King George the Third, and with the approbation of A. B. and C. D., two justices of the peace, according to the directions of the said act, that the said respective parishes and townships shall be united for the better maintaining and employing their poor, and that a convenient house or houses, with proper buildings and accommodations thereto, and with land fit for gardens, orchards, and the keeping of a cow or cows, shall be built [purchased or hired, *as shall be found most suitable*] at or near , for the reception and accommodation of the poor, as soon as conveniently may be, and, if hired, the same shall be rented upon such terms as shall be agreed upon by the guardians of the poor of the said several parishes and townships, or the major part of them, and the person or persons owning or being authorized to let such buildings, lands and premises; but no such agreement shall be made for a longer term than twenty-one years, unless the guardian or guardians shall have an option to vacate it at the end of that term on

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22 Geo. 3. c. 83. (1) See *ante*, No. LV. pp. 189. n. (1). 190. n. (1). (2). which apply to this as well as to that agreement.

AGREEMENTS.
Poor.

giving twelve months' notice in writing of his or their intentions so to do, nor for a shorter term than three years; and such houses shall be fitted up and made convenient for the purposes aforesaid, at the expences of the landlords [*or* tenants, *as shall be agreed between them*]. THAT the rents of the said houses, the expences of fitting up, making additions or alterations [*where they shall be agreed to be paid by the tenants*], and of the furniture thereof, and all the utensils and materials to be used for the purpose of employing the poor, and the wages and allowances to be paid to the governor of the house shall be paid by the said several guardians in their due proportions, according to the amount of the money raised by the poor's rates for their several parishes and townships, in respect of their poor, on a medium of three years preceding such agreement, and that such proportion shall be ascertained by and , whom we have nominated for that purpose, and shall be paid by the guardians of the poor of the said respective parishes and townships, to the persons who shall be authorized to receive the same within seven days after the same shall be so ascertained: and that the money earned by the labour of such poor shall be brought to the credit of that account at the end of every year. THAT the expences of victuals, beer and firing for the poor and the governor [and for the assistant *where any shall be found necessary*] in every such house or houses, with all other small incidental expences, shall be proportioned at the end of every month according to the number of poor which shall be sent from each of the said respective parishes, townships and places, and for the time they shall have resided there within such month. THAT the guardians of the poor of any of the said parishes, townships or places shall be at liberty to withdraw from this agreement at the end of the first three years or any succeeding three years, on giving twelve months' notice of such their intention, if it shall be so determined by three fourth-parts of the owners or occupiers of lands, tenements, or hereditaments assessed to the poor's rates and qualified as aforesaid at a public meeting summoned by due notice as aforesaid, specifying the occasion of such meeting; and in such case they shall receive one half of their due proportion to be ascertained by the persons above named, or such other persons as the parties shall agree upon for that purpose, or the value of the furniture, stock, utensils and implements then remaining at such poor-house, after paying their proportions of the rent, and of the salaries to the governor and other officers, to the end of the then growing year. AND that the guardians of the poor of each parish, township and place, shall provide suitable and convenient clothing for the poor, to be sent to the

AGREEMENTS. *Poor.*

said house or houses, from their respective parishes, townships or places, and charge the expences thereof in their accounts. AND we recommend to the Justices of the limit where such house is to be situated, A. B., C. D., and E. F. as persons duly qualified for the office of visitor of the said poor-house, and J. K., L. M., and N. O. as persons duly qualified for the office of governor of the said poor-house.

Approbation of Justices.

WE A. B. and C. D. the Justices of the Peace, mentioned in the within written agreement, do hereby give our approbation to the parishes and places herein named being united for the purposes of the Act within mentioned. Witness our hands this day of

*** See *ante*, p. 191. ***

No. LVII.

**An Agreement for uniting two or more Counties, Ridings or the like, for providing an Asylum for* Lunatic Poor, *pursuant to Act of Parliament* (1).

IT IS AGREED this day of , by and between the committee of Justices of the peace severally appointed for the counties [or ridings, cities, &c., *as the case may be*] of A., B., C. to treat for the uniting of the said counties, for the purposes of an act (for the better care and maintenance of paupers and criminal lunatics) passed in the forty eighth year of His Majesty King George the Third, that the said counties [&c., *as the case may be*] shall from henceforth be united for the purposes of the said act, and adopt in all respects, the provisions, rules, orders and regulations, and comply with all the requisites prescribed by the said act for counties uniting for those purposes, and that a lunatic asylum or house for the reception of lunatics, and other insane persons, with all necessary buildings, courtyards and outlets, shall be immediately provided, at or near , (2) and properly fitted up and accommodated for the purposes mentioned in the said act, and that the necessary expenses attending upon the providing, building, fitting up, repairs and maintenance of the said lunatic asylum, shall be defrayed by the said coun-

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(1) Lunatics and other insane paupers having generally been confined in the poor-houses of parishes, to the inconvenience and danger of the other poor, and it being considered too burthensome on single parishes to erect separate buildings for their reception, it was enacted by 48 Geo. 3. c. 96, that where it should be deemed expedient to the justices of the peace of any county, &c. that any county should be united with any adjoining county for providing an asylum for insane paupers, they might appoint a committee of their own body, not exceeding five in number, to treat with a committee of justices for such adjoining county, &c. for that purpose, and when concluded upon, an agreement to the above effect, signed by the major part of such justices, shall be binding on the respective counties. 48 Geo. 3. c. 96 Lunatic poor.

(2) The act requires that the agreement shall specify the place at or near which the asylum shall be erected.

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ties so united in the following proportions (that is to say) (1) the county of A. four ninths of the expences, the county of B. three ninths of the same, the county of C. two ninths of the same [or *as the case may be*]. AND we do further agree that the committee of visiting justices to superintend the building, the erection and management of the said lunatic asylum shall consist of eighteen [or *as the case may be*], whereof the justices of the peace for the said county of A. shall appoint eight, the justices of the peace for the county of B. shall appoint six, and the justices of the peace for the county of C. shall appoint four (2). AND hereunto we the undersigned justices of the peace, being the major part of each of the said committees of justices for the said several counties, do, on the part and behalf of the said counties, set our hands and seals this day of , in the year .

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(1) These proportions of each county are required by the act to be set out in the agreement, which are to be calculated according to the population as returned, pursuant to the act, 41 Geo. 3. c. 15.

(2) The act declares that the agreement shall specify the number of visiting justices to superintend the asylum; which number shall be in proportion to the share of the expenses of each county uniting, so that the same be not less than three for each county.—The act also empowers the justices to borrow money on mortgage of the county rates for the purposes of the act; a form of which will be found, *post*. "MORTGAGE."

AGREEMENTS.
Prosecute Offenders.

No. LVIII.

An Agreement between an Association of Tradesmen for the redress of abuses in the Trade, and for raising a Fund for Prosecuting *Offenders* (1).

ARTICLES of agreement made and concluded upon this day of in the year of our Lord , BETWEEN the several persons whose respective names and seals are hereunder subscribed and put, as parties hereto, traders in within the city of , and the subscribers thereof, of the one part, and of, &c. (treasurer as hereinafter mentioned), of the other part. WHEREAS several abuses have hitherto been, and yet are continued to be committed upon as well by the maker thereof, as by other persons concerned and dealing therein, in breach and contempt of a statute made in the [fourteenth year of the reign of King Charles the Second, (intitled an act for the reforming and redressing of abuses committed in the weight and false packing of butters)], and although there are sufficient penalties provided in the said statute for the punishing of the said abuses, yet for want of due encouragement to put the same in execution the said abuses remain unreformed, to the great detriment of the public. NOW THESE PRESENTS WITNESS, that to the end the said abuses may be reformed, and all offenders therein effectually prosecuted upon the said statute, the several parties hereto (save only the said) severally and respect-

Recitals.

WITNESS. Covenant by parties to subscribe a fund.

(1) This form (with some few amendments) has been extracted from *Wood's Conveyancing*, as being considered calculated to serve as a guide for preparing drafts of a similar kind; for although that collection cannot in the author's apprehension be with confidence relied upon, yet it contains many precedents of very general utility in practice; and he has not disdained any legitimate source which seemed calculated to assist him in his endeavouring to furnish the solicitor with such a variety of forms, as might serve to guide him in preparing the requisite assurances for carrying into effect all the ordinary transactions between his clients, which were likely to occur in the practice of the conveyancing department of his profession.

Wood's Conveyancing.

AGREEMENTS.

Prosecuting Offenders.

ively, and for their several and respective executors and administrators, but not jointly, or any one or more for any other or others of them, or the executors or administrators of the other or others, do and each of them doth promise and agree to and with the said ( ), by these presents, that they the said parties respectively, shall and will out of every of and other goods which they shall receive in from the several counties and places hereinafter mentioned, between the first day of and the day of allow and pay the several sums of money hereinafter mentioned, as well towards the prosecuting such offenders, as for and towards the defending any actions or suits which shall be brought or commenced against the said traders parties hereto, or their agents, on account of any duty or demand imposed, or which shall be imposed on them, by any person or persons whatsoever, (that is to say), one per for all and per for all received at the port of from the ports of , and elsewhere in the said county of , and one per for all received as aforesaid, from any of the ports at , and all other ports in England by shipping, and one per on all , received at from , and all other sea-ports whatsoever by shipping, which said per be collected by such persons as the committee of management for the time being, to be appointed as hereinafter mentioned, shall from time to time order and appoint, and by them paid into the hands of the said until order shall be made to the contrary by a majority of the parties at a general meeting duly summoned. AND it is hereby agreed that the money so collected and paid as aforesaid, shall be appropriated and applied by the said committee in or towards the defraying and paying all charges and expenses which the said parties and their agents shall be at in prosecuting such offenders, and defending themselves from such actions and suits as aforesaid. AND it is hereby agreed that A. B. &c., and (parties hereto) shall be and are hereby appointed a committee for the application of the said money and other management of the affairs of the said parties, subject to the controul of a majority of the parties hereto for the time being, at a general meeting to be summoned on all requisite occasions, and which committee shall and hereby are empowered from time to time to draw and take from the said or other monies, for the time being, such sum or sums of money as he shall have in his hands on the account and for the purposes of these presents. AND in case of the death or resignation

for prosecuting offenders.

Application of the money.

Committee to be appointed.

Death of subscriber]

AGREEMENTS.

Prosecute Offenders.

of any one or more of them, some other person or persons shall be chosen into his or their room by a majority of the parties hereto, at a general meeting. THAT if any difference shall happen between the members of the committee, touching the sense or meaning of any articles or other matters herein contained, such difference may be by them referred to, and shall be settled and determined by a majority of, the parties present at a general meeting. AND the said treasurer doth covenant, promise, and agree to and with other the parties hereto, by these presents, to render unto them or to the committee for the time being, as often as thereunto required, a true account of all monies by him received and disbursed, and the monies remaining in his hand shall and will retain or pay into the hands of such person or persons as the parties at a general meeting shall order or appoint to receive the same. IN WITNESS, &c.

Difference to be determined by majority.

Treasurer accounts.

AGREEMENTS.

Prosecute Offenders.

No. LIX.

**An Agreement for regulating an Association for* Prosecuting *Felons and other Offenders.*

ARTICLES of agreement indented, made and concluded, this day of , in the year of our Lord . BETWEEN the several persons whose names are (1) subscribed, and seals affixed to these presents, of the one part, and (*treasurer*) of [or other officer of the association] &c., of the other part. WHEREAS the several persons, parties hereto of the first part, are severally inhabitants of the parish or town of , in the county of , [or within the county, district, &c. (*as the case may be*)]. AND WHEREAS they have agreed to form themselves into an association or united body, for the prosecution of felons and other persons guilty of theft, and other crimes and offences, within the boundaries of the said parish, county, district, &c. (*as the case may be*), and for that purpose to give such rewards, and institute and observe such rules and regulations as hereinafter are mentioned. NOW THESE PRESENTS WITNESS, that for the ends and purposes aforesaid, the several parties hereto do hereby severally and respectively, and mutually and reciprocally for themselves severally and respectively, and for their several and respective executors and administrators (but severally and respectively only, and not jointly, or any one or more of them for the other or others of them, their, his or her executors or administrators) covenant, declare and agree with and to each other, and the executors

Recitals.

Parties have agreed to associate for prosecuting felons, &c.

WITNESS.

That certain rewards shall be given for the detection of offenders.

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(1) In general the words " or shall be" are here added in instruments which are left open for the signature of future parties, but they cannot have any effective meaning, as those persons whose names and signatures have been actually put at the time of the construction of the agreement (whenever it may take place) are to be considered parties, without any reference to those who may afterwards execute, and so from time to time when any future parties or subsequent questions on the instrument may arise.

AGREEMENTS.

Prosecute Offenders.

and administrators of each other, in the manner following; (that is to say) that they the said parties have agreed to become, and by these presents do become unitedly associated and bound to each other and the community, during the term of years to be computed from, &c., for the detecting, prosecuting and convicting to the utmost of their joint and respective powers and means, all and every felons, thieves, robbers, depredators and offenders of every description or kind against the laws of this realm, for crimes and offences committed within the parish, &c., aforesaid. AND to and for the ends and purposes of such detections and prosecutions, shall and will offer and pay the sum of £ , to any person or persons who shall, during the said term, discover or give evidence of any robbery on the highway, within the said, &c., or of the breaking or entering into any dwelling-house, or any barn, stable, or other out-house or building, within the said, &c., and of stealing or with an intent or presumed intent to steal or take thereout any property or valuable thing whatsoever, or any evidence of stealing any horse, cow, steer or other cattle, or any sheep, hog, pig, sow, goose, duck, turkey, poultry or other farming stock, or domestic animal of any sort or kind whatsoever, in or out of any such place aforesaid; or setting on fire corn in or upon any field, yard, or other place within the limits aforesaid, or of setting fire to any dwelling-house, barn, stable or other outhouse, building, or to any stack or rick of grain, hay, straw or fodder, within the same limits; or of maliciously killing or maiming any cattle or other animal, within the limits aforesaid, and belonging to any or either of the persons, parties hereto, of the first part: and also the sum of £ to any person or persons who shall discover or give evidence against any person or persons, who shall during the time and within the limits aforesaid, steal or feloniously or clandestinely remove or take away any grain, hay, fowls, household goods, implements or utensils of trade or husbandry, belonging to all or any of the said parties, or be guilty of milking any cow, other than for the owner thereof, or of robbing any court-yard, garden, orchard or field; or of cutting down any timber, tree or trees, grove or plantation, of or belonging to all any or either of the said parties. AND also the sum of £ to any person or persons who shall discover or give evidence against any person, who, within the time and limits aforesaid, shall steal any peas, turnips or potatoes, of or belonging to all, any or either of the said parties, or shall be guilty of wilfully breaking any hedges, gates, stiles, posts, poles, pales or rails, or of stealing any hooks or eyes, or any timber, boards, quarters, or offal wood, which shall be the property of any or either of the said parties. AND the sum of , &c. &c. [*continue on*

Scale of rewards.

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enumeration of the rewards agreed to be given for the detecting of other particular offences] all and every of which rewards, shall be paid in full on the conviction of the offenders respectively, in addition to the rewards allowed by any act of parliament then in force; and also any part thereof, or other sum or sums of money in the mean time as an encouragement to the detection of and giving evidence against any such offenders as aforesaid, which the committee of the said association shall in their discrimination think fit; and every of the said parties aforesaid shall and will contribute towards the same rewards, and the expense of prosecuting such felons, thieves and offenders, in equal proportions. AND for the better regulating and conducting the said association and the concerns thereof, it is hereby further declared and agreed by and between the present and future parties hereto, that the affairs of the association shall be under the conduct, regulation and management of a committee of persons to be chosen from the members for the time being of the same association, by ballot, at a meeting of the , to be held on the Tuesday in every month, any of which committee shall constitute a quorum or acting body of members. That in case of any vacancy happening in the said committee by death or otherwise, the same shall be supplied by the election, by the said committee, out of other the members of the association. THAT the said committee shall have the adjudication of all rewards to be given, and the controul and direction of all indictments and prosecutions to be instituted by virtue of these presents. ALSO the right of making calls on the parties for subscription or other sums of money for the paying such rewards, and defraying the expenses of such indictments and prosecutions, and which said sums of money shall be paid within calendar months next, after notice of the same being requisite shall be given to the respective parties. And each subscriber shall contribute and pay an equal proportion, according to the number of subscribers, towards all money which shall be called for to answer and pay such rewards, or to defray the expenses of prosecutions, and all other incidental expenses. The money which shall be called for from time to time, shall be paid to the treasurer for the time being of the said association, and shall be applied and paid by him in such manner and to such persons, as the committee for the time being, or the major part of them shall direct. All prosecutions which shall be conducted on account, and at the expense of the said association, shall be solicited and carried on by the solicitor for the time being of the association. And every subscriber shall be entitled to have every prosecution for any offence which, during the said (*seven*) years shall

Rewards to be paid on conviction.

Regulations of the association.

Affairs of association to be managed by a committee of members.

To supply vacancies.

Distribute rewards, &c.

Call for prosecution money.

Calls to be answered in one month.

Subscribers to contribute equally.

Money to be paid to treasurer.

To be applied as committee direct.

Solicitor to conduct all prosecutions.

Subscribers to be entitled to have prosecutions for

AGREEMENTS.

Prosecute Offenders.

be committed on his person or property, within the limits aforesaid, and which he or she shall be duly bound to prosecute, carried on by the solicitor for the time being of the said association, at the expence of the same association, under the direction and control of the committee for the time being of the said association or the major part of them. And the committee for the time being, or the major part of them, shall have full power to undertake any other prosecutions for offences committed within the limits aforesaid, at the expence of the said association, in those instances in which the poverty or situation of the persons, on whose persons or property the offences shall be committed, shall render it expedient that the offender or offenders shall be punished at the expence of the said association. Each and every subscriber shall cease to be a member of the said association, from the time he or she shall cease to be an inhabitant, or to be an owner or occupier of the lands aforesaid. And each subscriber shall be discharged from his or her engagement herein contained, on his or their death, so as not to impose any obligation on his or her heirs, executors or administrators, for or in respect of any offences to be committed subsequent to his or her death. A treasurer and solicitor to the said association shall be chosen once in every year by ballot, by the major part of the members who shall be present at a meeting, to be held at on the day of . The same person may be chosen a treasurer and solicitor, or a different person may be chosen to either of those offices. No treasurer or solicitor shall be eligible on committee. In case of a vacancy in the office of treasurer or solicitor either by death or any other cause within a year, such vacancy may be supplied for the remaining part of the year by the committee for the time being, or by the major part of them. The said treasurer and solicitor shall be treasurer and solicitor for the said association for the first year. The treasurer shall produce his account from time to time to the committee or major part of them. And at the end of every year, or on any other election of a new treasurer, the preceding one, or his heirs, executors or administrators, shall pay to the succeeding one, the balance of money in hand, as the same balance shall be settled and ascertained by the said committee for the time being, or the major part of them; and the account so stated shall be paid, and such payment be a good discharge. No account settled or allowed by the committee for the time being, or the major part of them, shall be afterwards examined or questioned. And all calls made by that committee, or the major part of them, shall be duly answered without any right to question the expediency or necessity of the same. AND each and every of the several persons, parties

offences on their persons or property carried on by association.

Power to committee to carry on prosecutions for poor persons.

Subscribers not to be members when they cease to be inhabitants, owners or occupiers.

Subscribers to be discharged from their liability on their death.

Treasurer and solicitor to be chosen by yearly ballot.

Vacancy of treasurer or solicitor in interim of the year may be supplied for remainder by committee.

Treasurer to produce accounts to committee.

Preceding treasurer to pay balance to succeeding one.

Accounts settled by committee to be final.

Calls for money to be answered without enquiry.

AGREEMENTS.

Prosecute Offenders.

Covenant by subscribers with treasurer, in trust for subscribers, to observe regulations.

hereto of the first part, *doth* hereby for himself, and herself respectively, and his and her respective heirs, executors and administrators, and as to and considering only his and her own respective acts, deeds, defaults and covenants, declare and agree to and with the said (*treasurer and solicitor*), his executors and administrators, in Trust for the persons who for the time being shall be the members of the said association, that they the said several persons, parties hereto, of the first part, and their respective executors and administrators, shall and will from time to time, and at all times during the said term of (*seven*) years, if they should so long continue members of the said association, pursuant to the rules and regulations hereinbefore contained, observe, perform, fulfil and keep, all and singular the articles, stipulations and agreements, hereinbefore contained, to be observed, performed, fulfilled and kept by them respectively. And make all such payments as ought to be or shall be required to be made, pursuant to such calls as aforesaid, of the said committee for the time being, or the major part of them. And make such payments respectively to the treasurer for the time being of the said association, subject to the order, control and disposition of the committee for the time being of the said association, or the major part of them. And that they respectively shall and will in all other respects, conform to, observe, perform, fulfil and keep, all and singular the rules and regulations, hereinbefore contained. IN WITNESS, &c.

Make payments to treasurer,

subject to distribution of committee.

And observe all rules.

Agreements.

Publication.

No. LX.

An Agreement between an Author, a Printer *and a Wholesale Stationer, for Printing and supplying Paper for a* Publication.

MEMORANDUM of agreement entered into this day of 18 . BETWEEN (*the author*) of, &c. of the first part, (*the printer*) of, &c. of the second part, and (*wholesale stationer*) of, &c. of the third part, as follows, that is to say: THAT the said (*printer*) shall print, and the said (*stationer*) provide paper (as pattern chosen) for a new edition of a certain work, on the subject of , and entitled , to be comprised in volumes, royal 8vo. number thousand copies, (*or as the case may be*), the paper and printing to be at a reasonable and fair price, to be determined in case of difference as hereinafter mentioned. THE work to go to press on the day of now next; three sheets per week to be printed by the said (*printer*), on sufficient copy being furnished and quick return of proofs by the said (*author*). A. B. of, &c. to be the publisher of the work, and to account to the said (*printer*) and (*stationer*), (in proportion to the amount of their respective just demands) for the produce of the work, after deducting per cent. commission, and per cent. trade allowance, until they shall be repaid such demands, with per cent. interest after twelve months' credit, and if they or either of them shall not be repaid in years from the day of , they or he shall have power to sell by public auction, a sufficient number of copies of the said work, to pay the balance or sum then owing, first giving calendar months' notice thereof to the said (*author*). THE said (*author*) to have two proofs and two clean sheets during the publication. The said (*printer*) and (*stationer*) to be at liberty to expend the sum of £ in advertising the work, and be allowed the same out of the proceeds. Any difference respecting the charge for printing, or paper, or with respect to any other matter relative to the work, to be referred to, and determined by arbitrators in the usual manner. THE said (*author*) engages not to

Printer to find print and Stationer paper.

Publisher to account to them till repaid.

Differences to be referred to arbitration.

AGREEMENTS.

Publication.

Author not to bring out similar work.

bring out a work similar to the above, until the said (*printer*) and (*stationer*) shall have been satisfied their aforesaid expences and advances, either by the means aforesaid, or by the said (*author*). The work to be brought out in parts or volumes, or the whole together, and at such price as the said A. B. shall advise under his hand. IN WITNESS, &c.

No. LXI.

An Agreement between an Author and a Publisher, *as Agent for the Retail Sale of a Work.*

MEMORANDUM of agreement made this day of , 18 . BETWEEN (*the author*) of, &c., of the one part, and (*the publisher*) of, &c., of the other part. WHEREAS the said (*author*) is the proprietor of a certain work entitled , and the said (*author*) has prepared and made ready for the press, a new edition (being the) of the said work in volumes, royal 8vo., and has proposed to the said (*publisher*), that he shall have the sole publication of the said edition of the said work, to consist of copies, on the terms hereinafter mentioned. NOW THEREFORE the said (*author*), for and in consideration [of the sum of £ , to him in hand paid by the said (*publisher*), *or as the case may be*] doth hereby agree with the said (*publisher*), that he the said (*publisher*) shall be the sole vendor or publisher of the said work to be entitled as aforesaid, at a commission of £ per cent. AND that he the said (*author*) will, within days next hereafter, deliver to the said (*publisher*) a corrected copy of the said work, or of a part thereof, and continue to supply him with a sufficient quantity, to enable the said (*publisher*) to complete the publication of the said work within calendar months from the date hereof. THAT the said (*publisher*) shall cause the said work to be well printed on good paper, and will pay and bear all the costs and charges thereof, and all other expences attending the said publication, and all loss, if any, which shall be incurred thereby, and indemnify the said (*author*) therefrom. PROVIDED ALWAYS, and it is hereby agreed, that from and out of the proceeds of the said work, the said (*publisher*) shall or may in the first place deduct and retain [the said sum of £ , and in the next place repay himself] the expences of paper, printing, advertisements, warehouse room at £ per annum, insurance money, and commission after the rate aforesaid, with the usual trade allowance of £ per cent; and will render a full and faithful account to the said (*author*) at Midsummer and Christmas in every year, of the sales and proceeds of the said work. AND it is hereby

WITNESS.

Agreement that shall be published.

Author will furnish copy.

Publisher to superintend the printing, &c.

And to defray expences.

Proceeds of the work to be applied in payment of paper, print, &c.

AGREEMENTS.
Publication.

also agreed, that after retaining or deducting such sums as aforesaid, the net proceeds, or profits of the said edition, shall be equally divided between the said (*author*) and (*publisher*); the said (*author*) having been first allowed copies of the said work, for the use of himself and friends. IN WITNESS, &c.

No. LXII.

An Agreement to Purchase Stock *sold out for the Accommodation of a Borrower and pay amount of Dividends in the meantime* (1).

MEMORANDUM of an agreement made this day of , in the year of our Lord 18 , BETWEEN, (*the lender*) of, &c., of the one part, and (*the borrower*), of, &c., of the other part: WHEREAS the said (*lender*), on or about the day of last, at the request of the said (*borrower*) sold out £ in the three per cent. Consolidated Bank Annuities, then standing in his name in the books of the governor and company of the Bank of England, at the then market price of £ per cent. (producing in the whole after deducting commission, the sum of £); and advanced the same to the said (*borrower*) on his promising and agreeing to replace the said Bank Annuities on or before the day of , and in the mean time to pay the said (*lender*) an annual sum equal to the dividends from time to time payable for the same annuities. NOW THESE PRESENTS WITNESS, that the said (*borrower*), for himself, his heirs, executors, and administrators, doth hereby promise, declare, and agree to and with the said (*lender*), his executors, administrators, and assigns, that he the said (*borrower*), his executors or administrators, shall and will on or before the day of , which will be in the year 18 , (*or next ensuing the date hereof*), well and truly transfer, or cause and procure to be transferred unto, in the name and to the account of him the said (*lender*), his executors, administrators, or assigns, in the said books of the governor and company of the Bank of England £ three per cent. Consolidated Bank Annuities, in the said fund of the said governor and company; AND likewise shall and will in the mean time, and until such transfer shall be made and perfected, pay or cause to be paid unto him the said (*lend-*

Recital of loan.

WITNESS.
Borrower will transfer stock,

and pay amount of dividends in the meantime.

(1) The payment of the dividends on stock sold out is not usurious, although they may happen to amount to more than 5*l.* per cent. on the produce of the stock sold, see Clarke v. Giraud, 1 Mad. 511.

AGREEMENTS.
Purchase Stock.

er), his executors and administrators, such sum and sums of money of lawful English value and currency, as shall be equal to the amount of the dividends or annual sums which he the said (*lender*), his executors or administrators, would have received or been entitled unto in case the said £ had remained standing in the books of the said governor and company in the name and as the property of him the said (*lender*), his executors or administrators; and at and upon such days or times as the said dividends or annual sums would have been or are customarily payable, viz. on the 5th day of January and the 5th day of July in every year, without any deduction or abatement whatsoever. IN WITNESS, &c.

No. LXIII.

An Agreement to refer *Disputes to the Arbitration of Persons named, and Covenant to* abide *the Award* (1).

Variations where the submission is in pursuance of a prior agreement for a reference.

ARTICLES of agreement indented (2) made the day of , in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN (3) (*one party in difference*), of, &c., of the one part, and (*the other*

(1) References to arbitration for determining disputes between parties are greatly countenanced and encouraged, as well by the courts as the legislature, see 9 and 10 Will. 3. c. 15; as being calculated to afford redress without the expense and delay of litigation; they will not therefore listen to any objections against the submission which do not go to the substance of the rights between the parties, Browne v. Browne, 1 Vern. 157; Lingood v. Eade, 2 Atk. 505; Tittenson v. Peat, 3 ib. 529; nor raise any presumption against the validity of an award honestly made by the arbitrators, Knox v. Symonds, 1 Ves. jun. 369; Sumpter v. Life, 2 Dick. 474: but will on the contrary raise presumptions requisite to substantiate it, Crofton v. Connor, 1 Brow. P. C. 530; Routh v. Peach, 2 Aust. 519; and as sufficient powers may be given to the arbitrators fully to ascertain the interests, and award redress between the parties, it were much to be wished that this species of tribunal were more generally resorted to.

Submission favoured by the Courts.

As to references to arbitration of disputes between masters and workmen, see 4 Geo. 4. c. 96. *post*, p. 245.

4 Geo. 4. c. 96.

(2) A submission to arbitration will be good, although made by parol, but as it will then be revocable also by parol, whilst otherwise it will be revocable only by deed, and if by parol be liable to great uncertainty as to the terms of submission; it is more proper that it should be by some instrument in writing, with mutual covenants, under a penalty to stand to the award, 8 Co. 80 b; Samways v. Eldesly, 2 Mod. 73; —— v. Mills, 7 Ves. 419, and Kyd. Aw. 11; nor can it (it should seem) unless in writing, be made a rule of court. See the above act 9 and 10 Will. 3; Ansel v. Evans, 7 Durnf. and E. 1; and —— v. Mills, ubi sup.

Parol submission revocable by parol.

Submission to be made a rule of court.

(3) Care should be taken to make all parties interested in the event of the award parties to the submission, as no others will be bound by the reference; Thompson v. Noel, 1 Atk. 60; but all persons being parties and sui juris will be bound by the award; Price v. Williams, 1 Ves. Jun. 365.

All parties interested to be parties to the submission.

AGREEMENTS.
Reference of Disputes.

party in difference), of, &c., of the other part. WHEREAS (1) disputes have arisen between the said *(parties in difference)* relative to [*here state the subject of difference between the parties*]. AND WHEREAS they the said (*parties in difference*) have agreed to refer the same to the judgment and determination of (*the arbitrators*), of, &c., and such other person, if any, as they may think proper to name in pursuance of the power hereinafter contained. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, they the said *(parties in difference)* for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, do hereby covenant, promise, and agree with and to each other, and the heirs, executors, and administrators of each other respectively, in the manner following (that is to say), that they the said (*parties in difference*) respectively, and their respective executors and administrators, shall and will well and truly observe, perform, and keep the award, order, arbitrament, and final determination of the said (*arbitrators*), or of such other person as they shall or may name and appoint to assist them, or as umpire therein, or of any two of them, in or concerning the premises, (and although they or either of them the said (*parties in difference*) shall have previously departed this life), of and concerning all and all manner of differences (2), controversies,

WITNESS.
Parties agree to refer disputes to arbitration, and covenant to abide the award.

Reference in pursuance of a prior agreement. See Variation in Chitt. C.L. 869.

(1) If the submission be in pursuance of a clause of reference contained in articles of copartnership, or other previous agreement, say,

"WHEREAS by articles of copartnership [*or as the case may be*] bearing date the day of , which was in the year , and made or expressed to be made between the said (*one party*) of the one part, and the said (*other party*) of the other part, it was amongst other things declared and agreed, that in case any dispute or question should arise between the said parties relative to the construction of the said articles, or all or any of the matters or things therein contained, the same should be referred to the arbitration of two indifferent persons, one to be named by each of the parties, with power for the said arbitrators so to be named to appoint a third person to assist them in the execution of the premises, and such other powers and authorities as are hereinafter given; and that the award of the said arbitrators or umpire should be final and conclusive upon all persons interested therein. AND WHEREAS disputes have arisen, &c." *as above.*

(2) The death of either party will, unless otherwise provided, be a revocation of the arbitrator's authority, see Cooper v. Johnson, 2 Bar. and Ald. 394.; 1 Chit. Rep. 187; Potts v. Ward, 1 Marsh. 366, and Edmunds v. Cox, 2 Chit. Rep. T. Mansf. 432.

claims, and demands whatsoever, whether legal or equitable (1), now subsisting or depending by or between the said parties, or any of them, and so hereby to them referred as aforesaid, or any thing in any wise relating thereto; so that the award of the said (*arbitrators*), and of such other person as aforesaid, if any shall be so appointed, or of any two of them, be made in writing under their respective hands, within the space of one calendar month (2) from the date hereof. PROVIDED NEVERTHELESS, that in case the said (*arbitrators*) should be desirious of having further time for making their award (3), not exceeding days from the expiration of the period hereby appointed for that purpose, and shall signify the same under their hands by indorsement on these presents, then and in such case the award so to be by them made within the said further or extended period, shall be equally binding and effectual as if the same had been made and declared at or before the expiration of the said period of one calendar month from the date hereof. AND IT IS HEREBY DECLARED AND AGREED by and between all and every the said parties hereto, that if they the said (*arbitrators*) shall not agree upon the said award or determination to be by them made in or concerning the premises; or if before any such disagreement take place they shall think proper so to do, it shall be lawful for them the said (*arbitrators*), and they are hereby expressly empowered (4) by writing under their respective hands, to

So that the same may be made within a given time.

Power for arbitrators to enlarge the time.

Power for the arbitrators to appoint an umpire.

(1) Matters of law as well as of fact may be referred to the decision of arbitrators, if the parties so choose; Price v. Hollis, 1 Maul. and Selw. 105; and the award, although not agreeable to law, will be binding, Ching v. Ching, 6 Ves. 282; Young v. Walter, 9 ib. 364; Kent v. Elstob, 3 East, 18; Stiff v. Andrews, 2 Madd. 6; Wood v. Griffiths, 8 Swains. 55, and cases there cited; but the submission must expressly authorise the arbitrators to decide on them, as otherwise their award, if contrary to a plain point of law, will be bad; Ridout v. Pain, 3 Atk. 494; if however the law be doubtful the award will be final, *ib.* sed vid. contrà, Blennerhassett v. Day, 2 Ball and Beatty, 120; Leonard v. Leonard, *ibid.* 171. 323.; and see *post.* AWARD.

Matters of law as well as of fact, may be referred.

(2) Unless an award be made within the time stipulated by the submission, it will not be binding on the parties; Cooth v. Jackson, 6 Ves. 34.

Award must be made within the time limited, but may be extended.

(3) If arbitrators be allowed to extend the time of making their award to any future day, they may enlarge it more than once; Payne v. Deakle, 1 Taunt. 509; Barrett v. Parry, 4 ib. 658; and it is a matter which circumstances frequently render proper should be left to their discretion; Reid v. Fryatt, 1 Maul. and Selw. 1.

(4) Arbitrators cannot delegate their power unless they are expressly authorised so to do by the terms of submission; where therefore there are but two arbitrators appointed, this power to name a third, or an umpire, is necessary; Lingood v. Eade, 2 Atk. 505; but such nomination shall be fair and impartial, and not left to chance, for the award of an

Umpire cannot be named unless so directed.

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appoint any other indifferent person to be umpire in, or to concur and join with them in considering and determining all or any of the premises hereby to them referred. AND in case the said (*arbitrators*) cannot agree upon an award or determination to be by them made within the said period of one calendar month, and shall refuse or neglect to appoint an umpire for the space of fourteen days next after the expiration of the said period, then such person as the attorney or solicitor general for the time being shall appoint, on application made to him for that purpose by either of the parties hereto, shall be an umpire in or concerning the premises. AND the award or umpirage, order or determination, which shall be made by the said umpire concerning the premises, shall be as conclusive upon all and every the parties hereto, and their respective representatives, as if he had been appointed by these presents, so that the same be made in writing under his hand and seal within one calendar month next after reference thereof shall be to him made. AND it is hereby declared and agreed that the said arbitrators or umpire, or any two of them, (*as the case may be*), shall have full power and authority to dismiss, or order the dismissal of the suit so now depending between the said parties hereto as aforesaid, and a release from all and each of the said parties hereto of the subject matter thereof, and to make or give any orders and regulations, or directions which they or he shall think proper as to the time and terms of such dismissal and release respectively; and also to order and award a conveyance (1), or other assurance from or by the said (*first party*) to the said (*second party*), his heirs, executors, administrators, and assigns, or such person or persons as he or they shall appoint, of all or any of the messuages.

And on neglect for days

he may be appointed by the attorney or solicitor general.

Award of umpire to be final:

if made within one month.

Authority of arbitrators or umpire to dismiss suit;

order conveyances.

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umpire chosen by lot will be set aside; Harris v. Mitchell, 2 Vern. 485: Wells v. Cooper, 2 Barn. and Ald. 218; unless each of the arbitrators approve of the person named by the other, and agree to cast lots as to which of them they shall appoint, in which case the appointment so made will be sanctioned by the Court; Neale v. Ledger, 16 East, 51.

Differences relative to real as well as personal property, may in general be the subject of reference.

(1) Disputes relative to real as well as personal estates may be referred to arbitration, and the arbitrators or umpire may award a conveyance; Hall v. Hardy, 3 P. Wms. 187, 190; Ridout v. Pain, 1 Ves. 10; and see Bart. Prec. vol. VI. p. 310. n. (51); Blundell v. Brittargh, 17 Ves. 241; except only where the estate is the property of a married woman, in which case it cannot as to her be referred to arbitration, as the court will not allow her interest to be bound by such mode of decision; Davis v. Page, 9 Ves. 350; nor, if the subject of dispute be a charity, without the consent of the Attorney General; Attorney Gen. v. Hewett, ib. 232; but otherwise in the case of an infant if the Master report it to be for his benefit; Davis v. Page, ubi sup. 9 Ves. 350.

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lands, and hereditaments contained or referred to, in, or by the said in part recited indenture of the day of ; and also to order or direct any further consideration money or consideration monies to be paid by the said (*second party*), his heirs, executors, or administrators, to the said (*first party*), his executors, administrators, or assigns, upon the execution of any such conveyance or assurance, which they or he shall think reasonable or just.

Payment of consideration money.

AND FURTHER, that the said suit now depending between the said parties shall be suspended, and no further proceedings had therein, nor any other action, suit or proceeding at law or in equity, be commenced or prosecuted by any or either of the said parties, his or their heirs, executors, or administrators, against the other or others of them, his or their heirs, executors, or administrators, in relation to the matters and things aforesaid, or any of them, until the said award, or umpirage shall have been made and delivered, or the said arbitrators or their umpire shall have declined or neglected to make their award or umpirage within the respective times hereby limited for that purpose.

Suit now depending to be suspended.

AND it is hereby further declared and agreed (1), that the present reference or submission shall or may be made a rule in his

Submission to be made a rule of court.

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(1) By the statute 9 and 10 Will. 3. c. 15. it is declared, that it shall and may be lawful for all merchants and traders and others, desiring to end any controversy, suit or quarrel, for which there is no other remedy than by personal action, or suit in equity, by arbitration, to agree that their submission of their suit, to the award or umpirage of any person or persons, shall be made a rule of any of his Majesty's Courts of Record which the parties shall choose, and to insert such their agreement in their submission, or promise, or the condition of the bonds whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons, which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may upon producing an affidavit thereof, made by the witnesses thereunto, or any of them, in the court of which the same is to be made a rule, be entered of record in such court, and a rule shall be made by the said court, that the said parties shall submit thereto; and such submission may be made a rule of court in vacation, in the matter of Taylor, 5 Bar. and Ald. 217. or after the award is made; Smith v. Symes, 5 Mad. 74. unless a prior time be limited by the parties.

By 9 and 10 Will. 3. c. 15. submission may be made a rule of court.

And where the submission is so made a rule of Court, a disobedience to the award, incurs a contempt of court; Lingood v. Croucher, 2 Atk. 395: and so does the revocation of the authority of the arbitration; per Eld. Ch. 1 Jac. and Walk. 511; and on notice and personal service the party will be committed; Knox v. Symonds, 3 Brow. Ch. Ca. 358, 1 Ves. Jun. 369, S. C.; but as the attachment is in the nature of a mesne process, and not of a judgment, the remedy is gone by the death of the party; Webster v. Bishop, Prec. Ch. 223; 2 Vern. 444; the making

Disobedience to such award is a contempt of court.

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Majesty's Court of King's Bench, at Westminster, on the application of either of the parties hereto, his or her heirs, executors, administrators, or assigns, and that no action or suit at law or in equity (1), shall be commenced or prosecuted against the said arbitrators or umpire, concerning his or their award or determination, after the same shall have been so made as aforesaid, nor to impeach the said award or umpirage, unless some collusion or other fraud be discovered or appear therein. AND the several parties hereto, do hereby respectively agree and submit to attend the said arbitrators and umpire, and to be examined upon oath (2) by the said arbitrators or umpire, relative to all or any of the matters so in difference as aforesaid; and also to produce unto and deposit with the said arbitrators or umpire, if thereto required, all or any deeds, writings, papers, and evidences, in their respective custody or power, concerning the same, when and as often as they shall respectively be thereunto required in writing, under the hands or hand of the said arbitrators or umpire; and in default thereof, the said arbitrators or umpire shall or lawfully may determine exparte, or otherwise, at their or his discretion (3). AND MOREOVER, that in case no award shall be made by the arbitrators or umpire, within the time hereinbefore appointed for that purpose, the Lord Chancellor, or Vice Chancellor, or Lord Keeper or Lords Commissioners of the Great Seal, for the time being, or any other judge, or justice, or judges or justices, before whom the aforesaid suit shall or may for the time being be depending (4), shall have and may exercise all the

Parties submit to be examined.

If no award made within the time limited, the Lord Chancellor, &c. to award.

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the submission a rule of court, does not however shut out the Court of Chancery from granting relief in case of fraud, or other matters coming within the peculiar jurisdiction of that court; Featherstone v. Cooper, 9 Ves. 67.

Award not to be impeached, unless for fraud or corruption.

(1) An agreement in a submission, that no exception shall be taken to the award of the arbitrator for any cause, is invalid; Hide v. Cooth, 2 Vern. 109; but it will be unimpeachable, unless partiality or corruption on the part of the arbitrators or umpire, or fraud on either of the parties be shewn; Lingood v. Croucher, 2 Atk. 395; Tittenson v. Peat, 3 ib. 529; Routh v. Peach, 2 Anst. 519.

Arbitrators cannot examine on oath, unless by consent.

(2) Arbitrators have no power to examine the parties on oath under a general power of reference, unless by the consent of the parties; Wellington v. Mackintosh, 2 Atk. 569.

Arbitrators may determine exparte, on non-attendance.

(3) Arbitrators may at their discretion proceed to determine the matters referred to them exparte, if either of the parties refuse to attend on being duly summoned; Waller v. King, 9 Mod. 63. Wood v. Leake, 12 Ves. 412.

Court cannot award unless by

(4) The Court cannot put itself in the place of the arbitrators on their failure to make the award within the time, or in the manner prescribed,

AGREEMENTS.
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personal authorities hereby given, or intended to be given to the said arbitrators or umpire; and that his or their determination, order, or decree, concerning the same, whether judicially or extra-judicially made, shall be binding and conclusive upon all and every the parties hereto, and although extra-judicially made, shall or may be made a rule of court, at the instance of either of the said parties, or of the respective representatives. AND each of the said parties hereto doth hereby bind himself, his heirs, executors, and administrators, unto the other of them, his executors, administrators and assigns, in the penal sum of £ (1) of good and lawful money of the United Kingdom of Great Britain and Ireland for the true and faithful observance and performance, on his and their respective parts, of the award, umpirage, or determination, which shall be so made as aforesaid, and of all and every the orders, directions, matters, and things, therein to be contained, which by him or them, severally and respectively, shall be required to be performed or observed. AND it is hereby lastly agreed, that all fees and monies, which the said arbitrators or umpire, or any or either of them, shall think proper to give to any counsel or others for advice, or otherwise relative to the premises aforesaid, and all other reasonable expences attending their or his award (2) or umpirage, in or concerning the premises, and also the costs (3) of the said suit, so depending as aforesaid, and of all matters and things in relation thereto, or to these presents, shall

And such award to be binding although extra-judicial.

Nomine pœnæ.

Costs to abide the award.

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unless such be the express agreement between the parties; Blundell v. Brittargh, 17 Ves. 242.

consent of parties.

(1) As parties cannot be compelled in equity to a specific performance of the award of the arbitrators, Thompson v. Noel, 1 Atk. 60; nor of an agreement to refer, Gourlay v. Duke of Somerset, 19 Ves. 431.; a penalty is usually annexed to the deed of submission, or mutual bonds given for a legal remedy in case of default.

Nomine pœnæ, for performance of the award.

(2) Although arbitrators may award a sum to themselves for their time and trouble if authorized to do so, yet this sum is not conclusive upon the parties, but will be subject to be referred to the proper officers of the Court, if deemed unreasonable. Virany v. Warne, 4 Esp. Rep. 47; Miller v. Robe, 3 Taunt. 461; Fitzgerald v. Greves, 5 ib. 342; George v. Lousley, 8 East, 13.

Arbitrators may award a reasonable sum to themselves, if authorized to do so.

(3) The arbitrators have no power to award the costs of reference unless empowered to do so by the terms of submission; Strutt v. Rogers, 7 Taunt. 213; and see Firth v. Robinson, 1 Barn. and Cress. 277, Bell v. Belson, 3 Chit. Rep. 157; or the submission is by bond only, in which case they have power to award costs, as between attorney and client. Hartnell v. Hill, For. Ex. Rep. 74; and see ante, Mod. Prec. 3d Edit. Vol. VI. p. 72, in *notes*.

Costs of reference may be awarded, if arbitrators are authorized to do so.

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abide the event of the said award, and be borne and paid by the party or parties, and at such time and manner as the same shall therein or thereby be ordered or directed to be paid or borne, and be reckoned and allowed in all things, as between party and party, and not as between attorney and client. IN WITNESS, &c.

SIGNED, SEALED, &c.

Arbitrators may enlarge time for award.

*** It has been determined, [as will be perceived by a preceding note, (see *ante*, p. 213. n. (3),] that arbitrators may have power given them by the deed of submission, to enlarge the time of making their award of their own authority should they think proper; but should the submission not contain such authority, and any circumstances should arise to render it expedient that a further time should be allowed them for that purpose, it cannot be done without the consent of the parties in difference, which may be given by an indorsement on the deed in the following form:

Form of enlargement of time by the parties.

"KNOW ALL MEN BY THESE PRESENTS, that we the within named (*parties in difference*), for ourselves severally and respectively, and for our several and respective heirs, executors, and administrators, do, by this instrument under our hands and seals, grant and allow unto the within named (*arbitrators*) the further period of one calendar month, for making their award of and concerning the several matters so referred to them as within mentioned, in addition to and augmentation of the time within given or allowed to them for that purpose; and which said augmentation of time, it is hereby agreed, shall be without prejudice to the within mentioned bonds in any wise howsoever." IN WITNESS, &c.

Agreement to enlarge time includes all the terms of the original submission.

This agreement virtually includes all the terms of the original submission to which it has reference, and therefore the submission for such enlarged time may be made a rule of Court without its being so expressly mentioned, Evans v. Thompson, 5 East, 189.

If the arbitrators have the power of their own authority to enlarge the time for making their award, it may be to the following effect:

Form of enlargement of time by the arbitrators.

"KNOW ALL MEN BY THESE PRESENTS, that we the within named (*arbitrators*), being desirous of having further time for considering the matters within referred to us, HAVE (as within authorized in that behalf), and by this writing under our hands, Do extend and enlarge the time within given to us for making our award, until the day of now next ensuing." IN WITNESS, &c.

Stamp.

No stamp seems to be necessary on this instrument, and see Herne et alt. v. Hale, 3 Esp. Rep. 237.

No. LXIV.

**An Agreement between a Vendor and Purchaser for* retaining *part of the Purchase Money, until a Minor attain twenty-one and execute Conveyance.*

ARTICLES of agreement indented made this day of in the year of our Lord 18 . BETWEEN (*the vendor*) of, &c., of the one part, and (*the purchaser*) of, &c., of the other part. WHEREAS, &c. [*recite shortly the deed or will by which the legacy or portion is charged upon the premises.*] AND whereas the said (*minor*) is at present under the age of twenty-one years, namely, of the age of or thereabouts. AND whereas the said (*purchaser*) hath lately agreed with the said (*vendor*) for the purchase of a part of the hereditaments upon which the said legacy or sum of £ is made chargeable as aforesaid, at the price or sum of £ , but the said (*minor*) by reason of his minority, being incompetent to join in the conveyance of the said premises, or to release the same from the said sum of £ it was agreed upon the treaty for the said purchase, that the said (*purchaser*) should retain in his hands the sum of £ part of the said purchase-money, upon and for the trusts and purposes hereinafter expressed, until the said (*minor*) should attain the age of twenty-one years, [upon &c. (1)]. AND whereas, by indentures of lease and re- Recitals.

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(1) If the purchaser is to give a bond for payment of the money to the trustees or executors, which in some cases may be reasonably required, as where the premises are leasehold, and the executors or trustees are answerable for payment of the legacy or portion, and the premises are deemed an inadequate security for the sum retained, say, Bond.

" Upon his entering into a bond for payment thereof, with interest, at the time and in the manner hereinafter mentioned, and the said (*purchaser*) hath accordingly, by his bond or obligation in writing, bearing even date, become bound to the said (*executors or trustees*) in the penal sum of £ , with a condition thereunder written for making void the same, on payment by the said (*purchaser*), his heirs, executors, or administrators, of the sum of £ and interest, at the times and in the manner following (that is to say) &c." (*as the case may be*).

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Retain Purchase-money.

lease, the lease bearing date the day next before the date of the release, and the release bearing even date herewith, and made BETWEEN, &c., the said hereditaments were conveyed and assured to the said *(purchaser)* and his heirs, in consideration of his paying down the sum of £ in part of the said purchase-money, and retaining the sum of £ , being the remainder thereof, upon the trusts, and for the ends and purposes, and subject to the provisoes and agreements expressed or to be expressed concerning the same, in or by a certain deed or agreement therein mentioned to bear, or intended to bear, even date therewith, meaning and referring to these presents: NOW THESE PRESENTS WITNESS, that in consideration of the agreements and premises aforesaid, it is hereby declared and agreed by and between the parties hereto, and particularly the said *(purchaser)* (1), for himself, his heirs, executors, and administrators, doth hereby covenant, agree, and declare, to and with the (*vendor*), his executors, administrators, and assigns, that he the said *(purchaser)*, his executors and administrators, shall and will stand and be possessed of and interested in the said sum of £ , together with interest for the same, after the rate of per cent. per ann. upon the trusts, for the intents and purposes, and subject to the provisoes and agreements hereinafter declared or expressed concerning the same (that is to say), IN TRUST for the said (*minor*) until he shall attain the age of twenty-one years, or shall depart this life under that age, or shall upon attaining that age neglect or refuse to execute such deed or deeds as hereinafter is or are mentioned; and in case the said (*minor*) shall attain his age of twenty-one years, and shall execute such deed or deeds, then upon trust to pay the same (2), with all interest accrued

WITNESS.

Purchaser will stand possessed of purchase money retained.

In trust for minor, &c. till he attain twenty-one; or refuse to execute release.

Bond.

(1) If a bond be given to the trustees or executors for payment of the money to them, say,

"The said (*trustees or executors*) for themselves severally and respectively, do hereby covenant, &c. that they the said (*trustees or executors*) respectively, shall and will stand, &c. [*as above*]."

Expences.

(2) If a greater sum than that chargeable upon the premises be retained by the purchaser, to indemnify against expences, say,

"The sum of £ , with interest, &c., part of the said sum of £ so by him retained as aforesaid, unto the said (*minor*), his executors, administrators, or assigns, and the remainder thereof unto him the said (*vendor*), his executors, &c. or other person or persons who shall or may under or by virtue of the said in part recited will *or* settlement be entitled thereto."

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due in respect thereof, after the rate aforesaid, unto him the said (*minor*), his executors, administrators, or assigns, for his and their own use and benefit; but in case the said (*minor*) shall depart this life under the age of twenty-one years, then that he the said (*purchaser*) (1) shall and will stand possessed of and interested in the said sum of £ , and all interest accrued due in respect of the same, in trust for such other person or persons as shall be entitled thereto, under or by virtue of the said in part recited will [*or* settlement], and pay the same to him, her, or them accordingly. PROVIDED always, and it is hereby further declared and agreed, that in case the said (*minor*) shall attain his age of twenty-one years, and he, his executors or administrators shall, for the space of calendar months next thereafter, refuse or neglect to execute such deed or deeds as in the opinion of counsel shall be necessary or proper for effectually releasing and discharging the said several hereditaments so purchased by the said (*purchaser*), and chargeable with the payment of the said sum of £ as aforesaid, of and from the same, and all claims and demands in respect thereof, upon tender being made to him or them of the said sum of £ , and interest; then and in such case it shall be lawful for the said (*purchaser*), his executors, administrators, and assigns, wholly and absolutely to retain the said sum of £ , together with all interest accrued due thereon, to and for his and their own use and benefit, and as his and their own proper monies, in order and to the intent that he and they may thereby indemnify himself and themselves from and against the said sum of £ so chargeable upon the said premises as aforesaid, and all claims and demands in respect of the same (2). IN WITNESS, &c.

If minor refuse to execute, purchaser to retain the money for indemnity.

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(1) Or trustees or executors, as the case may require, see *ante* p. 220, n. (1).

(2) If a bond be given for payment, add, Bond.

"The hereinbefore recited bond or obligation, or any thing therein contained to the contrary thereof in any wise notwithstanding, and then and in such case the said bond or obligation shall be null and void, and be delivered up to him the said (*purchaser*), his heirs, executors, or administrators."

AGREEMENTS.

Roads (weighing engine).

No. LXV.

**An Agreement between Trustees of different* Turnpike Roads *for erecting one Weighing Engine for the use of such Roads, in pursuance of an Act of Parliament* (1).

At a meeting of the trustees of the turnpike roads, under an act passed in the year of the reign of King George the for [*state the principal part of the title of the act,*] and also of the trustees of the turnpike roads under an act passed in the year of the reign of King George the ; for, &c. [*as above,*] held at , the day of , for the purpose of agreeing upon and ordering a weighing engine at the joint expense of the trustees, for the use of the said several turnpike roads, pursuant to the powers given by an act passed in the third year of the reign of his Majesty King George the Fourth, for regulating turnpike roads.

It appearing to us that a weighing engine may be erected at [*describing the spot where it can be most conveniently placed*], which will accommodate both the said turnpike roads, according to the true intent and meaning of the said act; We do therefore order, that an engine proper for the weighing of carriages of the constructions and weights specified in the said act be forthwith erected at, or as near as conveniently may be to the toll-gate or bar now erected upon the said turnpike road at ; and that A. B. (*the treasurer, clerk,*

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3 Geo. 4. c. 126. (1) By the 3 Geo. IV. c. 126. sec. 21. as altered by 4 Geo IV. c. 95. the trustees or commissioners of turnpike roads may cause cranes, machines, or engines for the weighing of waggons or carriages conveying any kind of goods or merchandize; and by sec. 25. it is provided that where two or more turnpike roads meet, the trustees or commissioners of such roads respectively, may fix upon a place for erecting one engine for all such roads; and by agreement amongst themselves to proportion the expenses, and also the money to arise from forfeitures incurred for overweight, amongst the said roads in such manner as they shall deem reasonable; and by sec. 148. it is declared that the above form, with such additions and variations only as occasion may require, shall be effective for this purpose.

or surveyor) of the said turnpike road do contract with some proper person [*or* with C. D. of, &c. *if the trustees think fit to name one*] for the making and erecting such engine, and do inspect and take care that the same be properly done; and we do order the gate-keeper at the said gate or bar for the time being to attend the said weighing engine, and carefully to weigh all carriages passing loaded upon the said road, at the place where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weights of such carriages and loading when required by the driver thereof, and also to enter in a separate book to be kept by him for that purpose, an account of every carriage so weighed, which shall with the loading exceed the weight allowed by the said act, and account to us for the money received for all such overweights: And we do hereby agree and order that the expenses of making and erecting the said weighing engine, (and the sum of £ , which we do hereby agree and order shall be paid to the toll-gatherer attending the said toll-gate for the time being, weekly, for his extraordinary trouble in attending the said weighing engine), shall be advanced and paid by the treasurers of the said several turnpike roads, in the shares and proportions following, *videlicet*, that the treasurer of the road shall pay [one half] [two thirds] *or* [three fourth] parts thereof (*as the trustees shall agree*), and the treasurer of the road shall pay the remaining [one half] [one third] *or* [one fourth] part thereof; and that the money to be received at the said weighing engine by forfeitures for over weight, shall be paid to the said respective treasurers in the like proportions, and applied by them for the use of the said respective turnpike roads.

Agreement that expenses shall be borne in due proportions.

SIGNED,
(*Trustees or Commissioners*).

AGREEMENTS.

Roads (repairing).

No. LXVI.

**An Agreement between the Trustees of a* Turnpike Road *(or Bridge), and a person liable by tenure to repair some part of it* (1).

At a meeting of the trustees of the turnpike roads, under an act passed in the year of the reign of King the "For," &c. [*state the principal part of the title of the act*]: held at the &c.

Whereas A. B. of , is liable by tenure, &c. [*as the case shall be*] to the repair of a certain highway, leading between and of the length of yards or thereabouts: And the said highway being now made turnpike road by virtue of the said act, will occasion a greater expense to make and keep the same in proper repair than would have been necessary if no such act had been obtained;

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3 Geo. IV. c. 126.

(1) It is enacted by 3 Geo. IV. c. 126. sec. 106. (which section is not repealed by the act of 4 Geo. IV. c. 95. repealing great part of that act), that it shall be lawful for the trustees or commissioners of any turnpike roads to agree with persons liable to repair any part of the road under the care of such trustees or commissioners, or of any bridges thereon, by tenure or otherwise, for the repair thereof, for such term as they shall think proper, not exceeding three years, and to contribute towards the repair of such roads or bridges such sum or sums of money as they shall think proper, out of the tolls arising on such turnpike roads; and such agreement is directed by the act (sec. 148) to be to the above effect, variable nevertheless as circumstances may require.

By the said act also, (sec. 107), where roads or bridges are by prescription liable to be repaired by certain parishes, and not by the counties in which they are situated, such counties or parishes respectively may enter into an agreement with each other for the repairs or improvement thereof by the county or counties in which they may be.

And further (sec. 108), the trustees or commissioners of turnpike roads are authorized to enter into like agreements with such parishes, whereby (in consideration of such sum or sums of money as may be agreed upon being duly paid to the treasurers of the said trustees or commissioners out of the rates to be raised for the repairs of bridges) the repairs of such bridge as shall be the subject thereof shall be made by the said trustees or commissioners during the continuance of the act under which they were appointed.

and the said A. B. attending this meeting in person [*or* by C. D. his attorney or agent, authorised to treat in his behalf], the said trustees and the said A. B. &c., in pursuance of a power given by an act passed in the third year of the reign of King George the Fourth, for regulating turnpike roads, have in order to put and keep the said road in proper condition and repair, come to the following agreement; *videlicet*, THAT the said trustees shall on or before the day of next, pay and allow the sum of £ , out of the tolls arising upon the said turnpike roads, towards putting the said road in proper repair, to be laid out and expended by the surveyor of the said turnpike road; AND that the said A. B. shall advance and pay into the hands of the treasurer of the said turnpike road, on or before the day of next, the sum of £ , to be also laid out and expended by the said surveyor in the repair of the said road: AND that from and after the next, the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said turnpike act shall continue, upon the said A. B. paying in to their treasurer the sum of £ , upon the in every year (1): WHICH the said A. B. doth hereby, for himself and his heirs, agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.

(*Trustees and A. B.*)

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(1) Or it may be agreed that the party (A. B.) shall keep the road in repair, upon having an annual allowance in money or statute-duty from the trustees.

AGREEMENTS.

Roads (repairing).

No. LXVII.

*An *Agreement by Subscription for advancing Money to Repair a* Turnpike Road *or Highway* (1).

WE whose names are subscribed do agree to advance and pay the several sums written by us opposite to our names, unto , to be laid out and expended in the making and repairing a certain highway leading from to , after an Act of Parliament shall be obtained for making the same a turnpike road, upon having the tolls collected upon such turnpike road assigned and made over to us, as a security for the respective sums so to be advanced by us, together with interest for the same, after the rate of £ per centum per annum, which sums we do hereby severally agree to pay by instalments in the following manner: that is to say, one-fourth part thereof on the day of next, one other said part thereof on, &c. &c.

Dated this day of 18 .

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3 Geo. IV. c. 126.

(1) An agreement for this purpose is authorized by the Road Act of 3 Geo. IV. c. 126; and a form to the above effect is declared to be effective.

No. LXVIII.

**An Agreement by Inhabitants at a Vestry or Public Meeting, to Pay a Gross Sum, or Annual Payment, to be discharged from the Repair of a particular* Road (1).

We whose names are subscribed, being a majority of the inhabitants of the parish of (A. B.) assembled this day of , at a vestry or public meeting held pursuant to notice duly given, for the purposes of consulting about an agreement to be made, concerning the repair of part of a highway [*or* turnpike road], situated, &c. within the said parish of , do consent and agree to pay the sum of £ , [*or if an annual sum be agreed upon*, to pay annually the sum of £ ,] to be absolutely exonerated and discharged from all future repairs of the said highway [*or* turnpike road].

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(1) The above form is given in the schedule of 13 Geo. III. c. 84; and although that Act is repealed by 3 Geo. IV. c. 126. it will, it is apprehended, still be effective where it is thought expedient to enter into an agreement of this kind.

AGREEMENTS.

Surgeon (of Ship).

No. LXIX.

**An Agreement between the Master, or Captain, or Owner of a Ship with a* Surgeon, *as Medicinal Attendant during a Voyage* (1).

ARTICLES of agreement, made and concluded this day of , in the year . BETWEEN (*the master*) now of, &c., master of the good ship or vessel called the , of the one part, and (*the surgeon*) of, &c., surgeon, of the other part; WHEREAS the said (*master*) is about to sail in the said ship or vessel to , with a crew to consist of souls, and hath agreed with the said (*surgeon*) to act on board of the said ship as surgeon and medical attendant to aforesaid and on return, upon the terms hereinafter mentioned. NOW THESE PRESENTS WITNESS, that the said (*master*) doth hereby covenant, promise, and agree with and to the said (*surgeon*), his executors and administrators, that he the said (*master*) shall and will find, provide, and allow, or cause to be found, provided, and allowed, unto and for the said (*surgeon*), in the said ship or vessel, during her intended voyage to and her return, his lodging in the cabin belonging or usually appropriated to the surgeon, and likewise his board and diet, and all other accommodations fitting and usually afforded to surgeons of ships or vessels of a like kind; and also shall and will pay or cause to be paid to him the said (*surgeon*), his executors, administrators, or assigns, the sum of £ per month, during the said voyage and return, by way of salary, or stipend, for his attendance and services on board the said ship or vessel, the said salary or stipend to commence on and from the day of , and a due proportion thereof to be paid on the said ship or vessel arriving at aforesaid, or other port at or in , and the residue

Recitals.

WITNESS. Master to find the surgeon with board, &c.

And pay monthly stipend.

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6 Geo. 4. c. 116.

(1) It is enacted by 6 Geo. IV. c. 116. that every British ship licensed to carry fifty persons or upwards (including the master and crew) to foreign parts, shall have a surgeon on board, who shall have duly passed his examination.

Surgeon (of Ship).

thereof upon her arrival at or in the port of , or other port in England. AND THESE PRESENTS ALSO WITNESS, that for the considerations aforesaid, he the said (*surgeon*) doth for himself, his executors and administrators, covenant, promise, and agree with and to the said (*master*), his executors and administrators, that he the said (*surgeon*), shall and will, during the said intended voyage and return, at his own costs and charges, find and provide such quantity and number of medicines and instruments in physic and surgery, as shall be or are usually deemed proper and needful for the master, crew, and ordinary ship's company of the number aforesaid (1), and administer and apply the same according to the best of his skill and judgment; Provided always, and it is hereby agreed, that physic and medicines which shall be administered to any passengers, or servants of the said (*master*), not being part of the ordinary crew or company of the said ship or vessel, shall be supplied out of the chest of medicines belonging to the said ship or vessel, or be paid for by the persons to whom the same may be administered, but without charge for administering the same (2). IN WITNESS, &c.

Surgeon will provide medicines, &c. for the ship's company;

but not for passengers,

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(1) By the afore-recited act of 6 Geo. IV. it is enacted, that the surgeon shall have a medicine-chest, duly stored with medicines of a proper assortment and quality.

(2) If the surgeon is to give attendance on shore, add,

"And further, that he the said (*surgeon*) shall and will, at his own costs and charges, upon the said ship's arrival at , and during her continuance there (if the same do not exceed weeks), find, provide, allow, and administer unto and for the said (*master*), and for the said ship's company as aforesaid, all such medicines and instruments in physic and surgery as shall be proper and needful; but in case the said ship shall continue there longer than such period, then the said (*master*) and the ship's company shall be furnished and supplied with medicines out of the chest of medicines belonging to the said ship or vessel, or otherwise by and at the expence of the (*master*), his executors or administrators, and to be only administered and applied gratuitously, by the said surgeon. IN WITNESS, &c.

Surgeon to administer medicine after the ship's arrival at her destination.

AGREEMENTS.

Surrender (of lease).

No. LXX.

**An Agreement between a Landlord and Tenant for* Surrendering *up Premises to the landlord, on being released from Rent* (1).

Variations where a part only of the premises are to be surrendered.

ARTICLES of agreement, indented, made this day of , in the year 18 , BETWEEN (*the landlord*), of, &c., of the one part, and (*the tenant*), of, &c., of the other part: WHEREAS by an indenture of lease bearing date, &c., and made between, &c., the said (*landlord*) demised unto the said (*tenant*) [amongst other lands therein mentioned], the piece or parcel of ground [*or as the case may be*] hereinafter described, for the term of years, from day of , at the yearly rent of £ . AND whereas the said (*tenant*) hath agreed, at the request of the said (*landlord*), to yield up the said [*or* part of the said] piece or parcel of ground, for the remainder now to come of the said term. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and for and in consideration of the sum of £ , to be paid at the time hereinafter expressed, and other the considerations hereinafter mentioned, he the said (*tenant*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*landlord*), his [heirs],(2) executors, administrators, and assigns, that he the said (*tenant*), his executors or administrators, shall and will by such good and sufficient deed, instrument, or other way or manner which may be requisite or sufficient for that purpose, surrender and yield up unto the said landlord, his [heirs], executors, administrators, or assigns, on or before the day of ,

WITNESS. Tenant agrees to surrender.

Surrender. (1) See the surrender made in pursuance of this agreement, *post.* "SURRENDER", and notes there.

Heirs. (2) The word "heirs" is to be omitted if the landlord have not the inheritance in the premises.

AGREEMENTS.

Surrender (of lease).

ALL (1) and every that and those the said piece or parcel of land or ground (*or as the case may be*) comprized in and demised by the said hereinbefore in part recited indenture of lease, as are recited or intended so to be, together with all and every the easements, appendants, and appurtenances whatsoever to the said premises belonging, or therewith now or then used and enjoyed; and all the estate, right, title, and interest whatsoever, of him the said (*tenant*), his executors and administrators, in, to, or concerning the same, by virtue of the said indenture of lease or otherwise howsoever; to the end and intent that the same premises with the appurtenances, and the residue then to come of the said term of years by the said indenture granted, or intended so to be, shall and may be thenceforth merged, or otherwise extinguished, or become vested in him the said (*landlord*), his [heirs] executors, administrators, and assigns, for his own use and benefit, and be by him and them had, holden, and enjoyed in like manner as if the said term of years had expired by effluxion of time. AND THESE PRESENTS FURTHER WITNESS, that in consideration of the surrender hereinbefore agreed to be made by the said (*tenant*), he the said (*landlord*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*tenant*), his executors and administrators, that upon the said surrender being made and perfected, he the said (*landlord*), his executors or administrators, [shall and will well and truly pay or cause to be paid (*if so agreed*) unto the said (*tenant*), his executors, administrators, or assigns, the sum of £ of lawful current money of Great Britain; and also] shall and will well and effectually release, exonerate, and discharge him the said (*tenant*), his executors, administrators, and assigns, for and during all the residue which shall be then to come and unexpired of or in the said term of years, in or by the said indenture of lease granted as aforesaid, of and from payment of [the yearly sum of £ , being part of, *or*] the yearly rent of £ thereby reserved or made payable; and also of and from all actions, suits, distress, covenants, claims, and demands whatsoever of or by him the said (*landlord*) or

FURTHER WITNESS.

Landlord agrees to release from rent.

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(1) If part only of the premises comprized in the lease are to be surrendered, say,

Part surrendered.

"ALL that, &c., [*describe the premises to be surrendered*] as the same are shewn or pointed out by the parts coloured red in the plan or ground plot drawn in the margin hereof (being part and parcel of the premises demised by the said in part recited indenture)."

AGREEMENTS.

Surrender (of lease).

any person or persons claiming from, under or in trust for him in respect of or concerning the same (1). IN WITNESS, &c.

Part only of premises surrendered.

(1) If a part only of the premises are surrendered, add,

"But so and in such manner, nevertheless, that such release, discharge, or exoneration, shall not exempt the said (*tenant*), his executors, administrators, or assigns, or other the pieces or parcels of ground, lands, or hereditaments, not hereby agreed to be surrendered, from payment of the yearly sum of £ (the residue of the yearly rent of £), by the said indenture of lease reserved or made payable; or the powers or remedies for compelling payment thereof, nor from any of the conditions or agreements in the said indenture contained, and which from henceforth are or ought to be performed by the said (*tenant*), his executors, administrators, or assigns, relating to or in respect of other the same last mentioned lands or hereditaments."

No. LXXI.

An Agreement by a Water Company to lay in Water *to supply a Manufactory [or Private Family].*

ARTICLES of agreement, indented, made this day of in the year of our Lord 18 , BETWEEN *(treasurer of the company)*, (treasurer of the company of proprietors called , and duly authorized to contract for and on the part of the said company) of the one part, and *(manufacturer or private inhabitant)* of, &c., of the other part: WHEREAS the said (*manufacturer*) hath agreed with the said company for providing him with a supply of water for the uses of his manufactory [*or* family], upon the terms hereinafter mentioned. Now THIS INDENTURE WITNESSETH, that he the said (*treasurer*), for and in consideration of the covenants and conditions hereinafter expressed, for himself, his heirs, executors and administrators, doth hereby covenant, promise, and agree, on the part and behalf of the said company of proprietors, called, &c., with and to the said *(manufacturer, &c.)*, his administrators, executors, and assigns, that the said company of proprietors shall and will at their own expense furnish and supply the said *(manufacturer, &c.)*, his administrators, executors, and assigns, with water out of or from the river , for the use of his said manufactory [*or* for the use of his family, in his now dwelling house, at, &c.] the amount or quantity of gallons at the least per ; the same to be conveyed into such part of the said manufactory [*or* dwelling house] as the said *(manufacturer, &c.)*, his executors, administrators, or assigns shall require; he and they yielding and paying for the same after the rate of per annum, by four equal quarterly payments, on the, &c., without any deduction or abatement whatsoever; and which said sum of £ the said *(manufacturer, &c.)* doth hereby, for himself, his executors, and administrators, covenant, promise, and agree with and to the said *(treasurer)*, his executors, administrators, and successors (for and on the behalf of the said company), well and truly to pay or cause to be paid at the times and in the manner herein-before appointed or mentioned for

WITNESS. Company agree to supply with water.

Covenant to pay sum agreed upon.

AGREEMENTS.

Water (laying in).

The water not to be mis-employed.

If not duly paid for, may be cut off.

And these presents to be void.

But without prejudice to prior claims.

payment thereof. PROVIDED ALWAYS, and it is hereby further agreed, that the said water so to be furnished or supplied by the said company, or any part thereof, shall not be given, sold, or be suffered to run to waste, or be otherwise employed than for the sole and proper use of the said (*manufacturer*), in his business of, &c. [*or* of the said (*inhabitant*) for the necessary and ordinary use of his family and domestic purposes]. AND further that if the said yearly sum hereby agreed to be paid for the said supply, or any part thereof, shall be behind or unpaid by the space of days next after any or either of the days hereinbefore mentioned for payment thereof, (the same having been demanded in writing, under the hand of the treasurer for the time being of the said company, at the dwelling or countinghouse of the said (*manufacturer, &c.*), or if the said water shall be suffered to run to waste, or be otherwise disposed of or employed contrary to the true and obvious intent and meaning of these presents, then and in either of such cases it shall be lawful for the said company wholly to cease and discontinue to furnish and supply the said water, and by their servants, officers, agents, or workmen, to cut off or otherwise sever the pipe or pipes conveying the same, at their free will and pleasure; and also to enter into and upon any part of the premises of the said (*manufacturer, &c.*) necessary for that purpose, without any manner of hindrance or molestation whatever of or by the said (*manufacturer, &c.*), his [heirs], executors, administrators, or assigns, or his or their servants or others; and then and from thenceforth these presents and every covenant, articles, matter, and things, herein contained in furtherance of the said supply shall be utterly void to all intents and purposes; but nevertheless without prejudice to any action, suit, claim, or demand, by either of the said parties upon or against the other of them for or in respect of any matter or thing prior to the time of the avoidance thereof. IN WITNESS, &c.

APPOINTMENTS.
Agent (general).

No. LXXII.

An Appointment of an Agent (1) *for the Management of the Affairs of a Principal going abroad.*

TO ALL TO WHOM THESE PRESENTS shall come (*principal*) sends greeting. WHEREAS the said (*principal*) being about to leave this kingdom and reside for some time abroad, and being desirous that his estates and affairs should be properly attended to and managed during his absence, hath requested (*agent*) to take upon himself the care and charge thereof on his behalf, under the direction of his trustees appointed under or by virtue of his marriage settlement (*or as the case may be*) during his absence, which the said (*agent*) hath consented to do. NOW THESE PRESENTS WITNESS, that the said (*principal*) HATH appointed, deputed and constituted, and in his place and stead put, and by these presents, DOTH depute, constitute and appoint, and in his place and stead put, the said (*agent*) as and for the agent, steward and lawful attorney of him the said (*principal*) of, for and concerning all and every his manors, messuages, farms, lands, and hereditaments and real estates, situated at , or elsewhere in England, and

WITNESS. Appointment of agent.

(1) See the notes to Nos. IV. V. VI. The several AGREEMENTS between Principals and Agents relative to mercantile affairs, inserted in a preceding part of this work (see Nos. IV. V. VI.), are *virtually* APPOINTMENTS of agents for the purposes they express, and may be converted into actual or *formal* appointments, by commencing either of them in the manner of the above precedent, and (after making appropriate recitals) proceeding with the WITNESSING part,

The preceding agreements with commercial agent, are *virtual appointments.*

"NOW THESE PRESENTS WITNESS, that he the said (*principal*) HATH appointed and deputed, and hereby DOTH, &c., him the said (*agent*) the agent of and for him the said (*principal*), in and for the matters, things and purposes hereinafter expressed (that is to say) [*state the object of the agency, and then add covenants, &c. between the parties as in those* AGREEMENTS]."

Hence I have not thought it necessary to insert any variety of forms of *agency* appointments.

APPOINTMENTS.
Agent (general).

on the behalf and in the name of him the said (*principal*) to take charge of, oversee and manage all and every the same manors, messuages, farms, lands, hereditaments and real estates, during the absence abroad of him the said (*principal*), and for that purpose doth by these presents authorize and empower him the said (*agent*) in the name and on the part and behalf of him the said (*principal*), to enter into and upon, when and as often as there shall be occasion, or as he shall think fit, all and singular or any of the said messuages, farms, lands, tenements, hereditaments and real estates, to view and see the state of repair, condition, tillage, cultivation and husbandry thereof, and to order and direct under the superintendance or advice and judgment of (*surveyor*) of, &c., the surveyor of the said (*principal*), all necessary or proper repairs, rebuildings, amendments, and improvements of or concerning the same, or such parts thereof, as now are or from time to time shall be in a state of decay or dilapidation, or defective in any wise howsoever, and to take down and rebuild, or alter all or any of the cottages, barns, stables, sheds, outhouses or other buildings, in or upon the said farms, lands or hereditaments, as occasion shall require, or as shall be thought fit or adviseable for the improvements, benefit and advantage of the said hereditaments. AND ALSO under the like superintendance, judgment and advice from time to time, to fell or cut down, off, from or upon the said lands and hereditaments, or any part thereof, a sufficient quantity or number of timber or other trees, or wood fit and proper for the making, doing or performing all and every or any of such repairs, rebuildings, amendments or improvements as aforesaid, or to sell or dispose thereof for the purchase of or exchanging the same for other timber, for all or any of the said purposes. AND ALSO for and in the name of him the said (*principal*), to sign and give notices to tenants and occupiers of the said messuages, lands or hereditaments, or any part thereof, of or concerning any defects of or in the repair, state or condition thereof, and requisitions for repairing the same pursuant to any such notice; and with full authority also to pay all taxes, rates, charges, expences and other outgoings whatsoever, to be from time to time payable by or chargeable upon the said (*principal*) for or on account of the said hereditaments or any parts thereof. And also for or in the name of him the said (*principal*), to demise and let any of the said cottages, farms and land of and belonging to the said (*principal*) situate at aforesaid, as shall become untenanted by death or otherwise during the absence of the said (*principal*), at the like rent or greater as the same are now held by the present tenants. And also for and in the name of the said (*principal*), to act, demand and

Authority of agent.

Manage estates.

Fell timber.

Notices to tenants.

Grant leases.

Receive rents.

APPOINTMENTS.
Agent (general).

recover of and from the present or any future tenants or occupiers of the said hereditaments, or any part thereof, all and every the reserved and other rents, services and sums of money to be from time to time payable by the said tenants or occupiers, or any of them, for or in respect of the same hereditaments and premises, or any part thereof, in any manner howsoever. And on payment thereof to make and assent to all just and reasonable abatements, payments and allowances, for or in respect of land-tax, rates, repairs and other outgoings, paid or done by any such tenant or tenants, or occupier or occupiers, for and on behalf of the said (*principal*), to which, as landlord of the said hereditaments, he is or shall be subject or liable; and also on non-payment of any such rent or rents, or sum or sums, to be so reserved or made payable as aforesaid, to enter and distrain for the same, and the distress and distresses there found to detain and keep or otherwise dispose of and deal with according to law, and on receipt thereof, or of any part thereof, for and in the name of him the said (*principal*) or otherwise as the case may require, to sign and deliver proper and effectual receipts, releases or other discharges, or acknowledgements for the same respectively. And also in the name of him the said (*principal*) to warn off, and prohibit from and proceed against in due form of law, either before or after such warning off or prohibition, any person or persons who shall or may at any time or times be found or be hunting, coursing, shooting, fishing, hawking or otherwise sporting or trespassing upon the said hereditaments or any part thereof, and to act in or concerning the same premises in all things as he shall think fit and be advised. AND for and in the name of him the said (*principal*) to settle, adjust or refer to arbitration or other decision, any account or accounts, reckoning or reckonings, dispute or disputes whatsoever, with any person or persons whomsoever, between whom or wherein he the said (*principal*) now is, or at any time or times hereafter during his said absence, shall or may be in difference, interested or concerned, and to pay or receive the balance or balances, or other sum or sums of money which may be awarded or payable in respect thereof. And also for and in the name of the said (*principal*) or otherwise, as his attorney or solicitor, to commence any action or suits, as well real as personal or mixed, in any court of law or equity, for the recovery of any debts, sum or sums of money, right, title, interest, property, matter or thing whatsoever now due or payable, or to become due or payable, or in anywise belonging to the said (*principal*) or conceived to be so by any means, or on any account whatsoever, and the same action or actions, suit or suits, to prosecute and follow or to discontinue or

Make allowances.

Warn off trespassers.

Settle disputes.

Bring actions.

APPOINTMENTS.

Agent (general).

General power and confirmation.

become nonsuit therein, or adjust and compromise as the said (*agent*) or his counsel shall see cause or be advised. And generally to do all and every or any other acts, deeds, matters and things whatsoever, in or about the estates, property and affairs of him the said (*principal*) as amply and effectually to all intents and purposes, as he the said (*principal*) could do or have done in his own proper person if these presents had not been made; he the said (*principal*) hereby ratifying and confirming, and agreeing at all or any time or times, to allow, ratify and confirm, all and whatever the said (*agent*) shall lawfully do or cause to be done in and about the premises aforesaid by virtue hereof, or otherwise, and indemnify and save harmless him the said (*agent*), his executors and administrators, from and against the same. IN WITNESS, &c.

APPOINTMENTS.

Agent (Parochial resident act).

No. LXXIII.

**An Appointment by the Ordinary, &c. of an* Agent *or Nominee, to carry into execution Contracts made by virtue of the Parochial Resident Act* (1).

We whose names are subscribed being the ordinary, patron and incumbent of the rectory, vicarage, &c., of within the county of and diocese of the bishop of , do hereby nominate and appoint , of , to receive the money authorized to be raised by an act passed in the seventeenth year of the reign of his Majesty king George the Third, intituled "An act to promote the residence of the parochial, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses and other necessary buildings and tenements for the use of their benefices," for the purpose of building, rebuilding, repairing, or purchasing the parsonage house, &c. [*as the case shall be*], to the said rectory, vicarage, &c., belonging, and to pay and apply the same, and to enter into contracts with proper per-

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(1) By the act of 17 Geo. III. c. 53. (explained and amended by 21 ibid. 66.) incumbents of livings are empowered to build houses for their residence on their benefices, and to borrow money for that purpose, which money it is declared by the act (s. 4.) "shall be paid into the hands of such person or persons as shall be nominated and appointed to receive and apply the same, by the ordinary, patron, and incumbent, by writing under their respective hands in the above form, after such nominee shall have given a bond [*the form of which see post.* "BOND"] to the ordinary, with sufficient surety in double the sum so to be borrowed and raised, with condition for his duly applying and accounting for the same, as directed by the act; and the receipt of the person or persons so to be nominated, it is declared, shall discharge the person or persons advancing the money. And it is further declared that such nominees shall enter into contracts for such buildings or repairs as shall be approved by the ordinary, patron, and incumbent, and shall be specified in an instrument written on parchment and signed by them; and shall see that such contracts are duly carried into execution.

17 Geo. III. c. 53.

APPOINTMENTS.

Agent (Parochial resident act).

sons for such buildings or repairs, and to inspect and take care of the execution of such contracts, and to take such receipts and vouchers, keep such accounts, and do and perform all such other matters and things which nominees are authorised and required to do and perform in and by the said act; the said having given security for the due application thereof according to the direction of the said act. Given under our hands this day of .

(Ordinary Patron and Incumbent.)

No. LXXIV.

An Appointment of Arbitrators *in pursuance of an Agreement of reference* (1); *and Covenant to abide Award.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*the parties in difference*) of, &c., SEND GREETING. WHEREAS, &c. [*recite the deed (if any), under which the reference is made.*] AND whereas it was thereby agreed amongst other things, that if any doubt or question should arise between either of the parties thereto as to the just amount of the said debt [*or as the case may be*], the same should be referred to two arbitrators to be appointed, the one by each of the parties, or by an umpire or assistant arbitrator, to be by such nominees appointed, in the usual way of arbitration. AND whereas differences have arisen as to some of the items of the said account, [*or as the case may be*]. NOW THESE PRESENTS WITNESS, that they the said (*parties in difference*), in pursuance of the said in part recited agreement, HAVE respectively nominated and appointed, and by these presents DO nominate and appoint of, &c., and of , arbitrators between them relative to the said differences, with power for them the said (*arbitrators*) to appoint a third person either before or after the commencement of their deliberations thereon (2). AND THESE PRESENTS FURTHER WITNESS that, in pursuance of the same agreement, they, the said (*parties in difference*), for themselves severally and respectively, and for their several and respective executors and administrators, do hereby covenant, promise, and agree with and to each other, and the executors and administrators of each other, in the manner following, that is to say, that they, the said (*parties in difference*), respectively shall and will well and truly observe, perform, abide by, and keep the award or determination of them the said (*arbitrators*), or of such other person as they may name as umpire or to assist them in their award, or of any two of such three persons, in or concerning the matters and things so referred to

WITNESS.
Parties appoint arbitrators.

Covenant to abide award.

(1) See *ante*, No. LXIII. p. 211. notes.
(2) See appointment of an assistant arbitrator, *post*. No. LXXV. p. 243.

APPOINTMENTS.
Arbitrators.

them the said (*arbitrators*) as aforesaid, or in relation thereto, so, nevertheless that such award or determination be made in writing under the hands of them the said arbitrators or umpire, within the space of one calendar month next after the date hereof, or such other postponed time as the said arbitrators, or the parties hereto, shall hereafter appoint. AND it is hereby further declared and agreed, that this present reference or submission, shall or may be made a rule of his Majesty's Court of King's Bench, at Westminster, on the application of either of the parties hereto, his executors, administrators, or assigns. And the said parties hereto do hereby respectively agree to attend the said arbitrators or umpire when required, and to be examined upon oath relative to all or any of the matters aforesaid; and also to produce unto and deposit with the said arbitrators or umpire, all papers, writings, and evidences in their respective custody or power concerning the same. AND, moreover, that the said arbitrators or umpire shall or may award the costs of this submission, and by whom the same shall be paid. AND lastly, each of the said parties for the due observance and performance by him, his heirs, executors and administrators, of the aforesaid covenants and agreements, doth bind himself, and themelves, and every of them respectively, in the penal sum of £ (1). IN WITNESS, &c.

Rule of Court.

Attend arbitrators.

Costs.

Penal sum.

Penal sum. (1) As to penal sums, see *ante*, p. 65. n. (3).

No. LXXV.

***An Appointment of a Third Arbitrator (1), by two Arbitrators already named, to be indorsed on the Deed of Submission.**

WE (*arbitrators*) the arbitrators within named by this instrument in writing under our hands, in pursuance of the authority to us in or by the within written deed or instrument given for that purpose, do nominate and appoint (*third arbitrator*), of, &c., a third person or arbitrator, for determining jointly or together with ourselves, the matters in difference within referred to us. IN WITNESS, &c.

(1) See *ante* No. LXXIV. and if the appointment be of an *umpire*, see *post*. "APPOINTMENT, *Umpire*." Umpire.

APPOINTMENTS.

Arbitrators (Master and Servants).

No. LXXVI.

**An Appointment of* Arbitrators *for determining disputes between a Master and his Workmen, pursuant to an Act of Parliament* (1).

I, A. B. of, &c. [*set forth the name, residence, and description of the party*], do hereby nominate and appoint C. D. of, &c. one of his Majesty's Justices of the Peace, for the county [*or as the case may be*] of my arbitrator, under and by virtue of an Act passed in the year of the reign of his Majesty King the intituled, "An Act" [*set forth the title of the Act*] to hear and determine the matters in difference between me and E. F. of, &c. AND I, E. F. of, &c. do hereby appoint G. H. of, &c. also one of his Majesty's Justices of the Peace for the county [*or as the case may be*], of, &c. arbitrator under the said Act, for the purpose of hearing and determining the matters in difference between me and the said A. B. As witness our hands, this day of .

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4 Geo. IV. c. 96. (1) See the Act of 4 Geo. IV. c. 96. (*post.* p. 245.), of which, being so recent an act and likely to be frequently had recourse to, I have thought it fit to give an abstract.

*An Abstract of 4 Geo. IV. c. 96. *relative to reference of disputes between Masters and Workmen to Arbitration* (1).

By the above mentioned act it is provided,

§ 2. That the subjects of dispute after mentioned arising between masters and workmen, or between workmen and those employed by them, in any trade or manufacture in any part of the United Kingdom of Great Britain and Ireland, may be settled and adjusted in manner hereafter mentioned; (that is to say) disagreements respecting the price to be paid for work done, or in the course of being done, whether such disputes shall happen or arise between them respecting the payment of wages as agreed upon, or the hours of work as agreed upon, or any injury or damage done or alleged to have been done to the work, or respecting any delay or supposed delay in finishing the work, or the not finishing the work in a good and workmanlike manner, or according to any contract, or to bad materials; cases where the workmen are to be employed to work any new pattern which shall require them to purchase any new implements of manufacture, or to make any alteration upon the old implements, for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to such workmen for or in respect thereof; disputes respecting the length, breadth, or quality of pieces of goods, or, in the case of cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof; disputes respecting the wages or compensation to be paid for pieces of goods that are made of any great or extraordinary length; disputes in the cotton manufacture respecting the manufacture of cravats, shawls, policat, romal, and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs; disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled; disputes between masters and persons engaged in sizing or ornamenting goods; but nothing in this act contained shall authorize any justice or justices acting as hereinafter mentioned to establish a rate of wages or price of labour or workmanship, at which the workmen shall in future be paid, unless with the mutual consent of both master and workmen: Provided that all complaints by

Causes of dispute which may be referred.

(1) (See *ante*, p. 244.)

APPOINTMENTS.
Arbitrators (4 *Geo.* 4. *c.* 96).

any workmen as to bad materials, shall be made within three weeks of his receiving the same; and all complaints arising from any other cause shall be made within six days after such cause of complaint shall arise.

As to the appointment of referees.

§ 3. And whenever such subjects of disputes shall arise it shall be lawful for the master and workman, or either of them, to demand and have an arbitration or reference thereof in manner following; (that is to say) where the party complaining and the party complained of, shall come before or agree, by any writing under their hands, to abide by the determination of any justice of the peace or magistrate, within which the parties reside, it shall be lawful for such justice or magistrate to hear and finally determine, in a summary manner, the matter in dispute between such parties; but if such parties shall not come before, or so agree to abide by the determination of such justice or magistrate, then it shall be lawful for any such justice or magistrate, on complaint made before him, and proof by the examination of the party making such complaint, that application has been made to the person against whom such cause of complaint has arisen, or his agent, if such dispute has arisen with such agent, to settle such dispute, and the same has not been settled upon such complaint being made, or where the dispute relates to a bad warp, that such cause of complaint has not been done away with within forty-eight hours after such application, to summon before him such person, or agent, on some day not exceeding three days, exclusive of Sunday, after the making such complaint, giving notice to the person making such complaint, of the time and place appointed in such summons, for the attendance of such person, or agent; and if at such time and place, the person so summoned shall not appear by himself, or send some person on his behalf, to settle such dispute, or, appearing, shall not do away such cause of complaint, then it shall be lawful for such justice, at the request of either of such parties, to nominate arbitrators or referees for settling the matters in dispute; and such justice shall then and there at such meeting, propose not less than four nor more than six persons, one half of whom shall be master manufacturers, or agents or foremen of some master manufacturer, and the other half workmen in such manufacture; such respective persons residing in or near to the place where such disputes shall have arisen; out of which master manufacturers, agents, or foremen, the master engaged in such dispute, or his agent, shall choose one, and out of which workmen so proposed, the workman or his agent shall choose another, who shall have full power to hear and finally determine such dispute.

Appointment of other referees where those appointed refuse or delay to act.

§ 4. In case any of the persons so proposed shall refuse or delay to accept such arbitration, or, accepting, shall not act therein, within two days after such nomination, the justice shall proceed to name another or other persons of the descriptions aforesaid, in the room of the person so refusing or delaying to accept, or who shall not act; and in every case of a second nomination the arbitrators shall meet within twenty-four

APPOINTMENTS, *Arbitrators* (4 *Geo.* 4. *c.* 96).

hours after the application for the same, and at the same place at which the meeting of the referees first named was appointed, or at some other convenient place, as the justice may appoint; and the expence of every such application for the appointment of a second referee shall be borne by the party through whose default, or the default of whose referee such application is rendered necessary; and the justice making such second appointment shall certify the same in the form hereafter set forth, or in some other form to the like effect; and in every case where a second arbitrator shall be appointed, and such second arbitrator shall not attend at the time and place appointed, it shall be lawful for the other arbitrator, at such time and place, to proceed by himself to the hearing and determining of the same matters; and in such case the award of such sole arbitrator shall be final and conclusive, without being subject to review, appeal, or suspension.

Notice of meeting of referees to be given.

§ 5. The arbitrators or referees being so nominated, the justice shall thereupon appoint a place of meeting according to this act, and also a day for the meeting, notice of which nomination, and of the day of meeting, shall thereupon be given by such justice to the persons so nominated, and to any party to any such dispute, who may not have attended the meeting before such justice, which appointment shall be by such justice certified in the form therein named. And the persons so appointed as aforesaid shall hear and examine the parties and their witnesses, and determine such dispute within two days after such nomination, exclusive of Sundays; and the determination of such arbitrators shall be final and conclusive.

Place for the meeting of referees.

§ 6. In all cases where complaints are made respecting bad warps or utensils by workmen, the place of meeting of the referees shall be at or as near as may be to the place where the work shall be carrying on; and in all other cases at or as near as may be to the place or places where the work has been given out.

Attendance of parties complaining.

§ 7. If any person so complaining shall not attend, or send some person on his behalf, at the time and place appointed for the purpose of naming such persons, such person shall not in such case be entitled to the benefit of this act; and if any person against whom any such complaint shall have been made, shall not attend, or send some person on his behalf, the justice shall thereupon nominate a person for him, out of such persons so proposed.

How complaint to be investigated.

§ 8. The said arbitrators and referees shall meet at the time and place fixed, and shall, by inspection of the work, by hearing and examining the parties, or any other persons on their behalf, or that attend to give evidence, upon oath, or otherwise, or by otherwise ascertaining the true state of the case, in such manner as to such arbitrators and referees shall appear necessary, proceed to determine the matter in dispute; and the award to be made by such arbitrators and referees shall be final and con-

APPOINTMENTS.

Arbitrators (4 *Geo.* 4. *c.* 96).

clusive between the parties, without being subject to review or challenge by any court or authority whatsoever.

§ 9. It shall be lawful for any arbitrator or arbitrators, and they are hereby authorized and required at the request in writing of any of the parties, to issue their summons to any witness or witnesses to appear and give evidence before such arbitrator or arbitrators, at the time and place specified in such summons; and if any person so summoned to appear as a witness, shall not appear before such arbitrator or arbitrators, or offer some reasonable excuse for the default, or, appearing, shall not submit to be examined as a witness, then and in every such case it shall be lawful for any one or more justices of the peace (proof on oath having been first made before such justice or justices, of the due service of such summons), by warrant under the hands of any such justice or justices to commit any such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justice or justices, there to remain, without bail, for not exceeding two calendar months, nor less than seven days, or until such person shall submit to be examined, and give his evidence, before such arbitrator or arbitrators: Provided always, that in case such dispute shall be heard and determined before such offender shall submit to be examined, and give evidence, as aforesaid, then and in every such case he, she, or they shall be imprisoned the full term of such commitment.

Refractory witnesses may be committed.

Complaint may be adjourned from the referees to a justice.

§ 10. In case such arbitrators cannot agree upon and decide such matter, or shall not make and sign their award within three days after the date of the order of such justice, certifying their appointment, then the said arbitrators shall, without delay, go before the justice by whom they were appointed, and, in case of his absence, before any other justices, residing nearest to the place, and shall state to such justice or justices the points in difference between them, which points the said justice or justices shall hear and determine upon the statement of the arbitrators; and the said justice or justices are to settle and determine the matter in dispute with all possible dispatch, and in all cases, within two days after the expiration of the time hereby allowed to the arbitrators to make and sign their award; and the determination of such justice or justices shall be final and conclusive between the parties, without being subject to review or challenge by any court whatsoever.

Provision where one referee refuses to go before the justice.

§ 12. If either arbitrator shall neglect or refuse to go before such justice, it shall and may be lawful for such justice, after summoning the arbitrators to attend him, to determine the matter in dispute, upon the statement of either of the arbitrators who shall come before him. But no justice being also a master manufacturer or agent, shall act as such justice.

Disputes may be adjusted by any other mode of arbitration

§ 13. Provided always, that as well in all such cases of dispute as aforesaid, as in all other cases, if the parties mutually agree that the mat-

APPOINTMENTS.

Arbitrators (4 *Geo. 4. c.* 96).

ter in dispute shall be arbitrated and determined in a different mode to the one hereby prescribed, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties, and the same proceedings of distress, sale, and imprisonment, as hereafter mentioned, shall be had towards enforcing such award (by application to any justice of the place within which the parties shall reside), as are by this act prescribed for enforcing awards made under its provisions.

upon which the parties may agree.

Partners, agents, and servants of masters, to be considered principals.

§ 14. Where any work shall have been delivered to any workman by the agent or servant of any master, and also where two or more persons shall carry on business as partners, in every such case the like proceedings may be had against such agent, servant, or any partner, and shall be as effectual as if the same had been had and made against the principal, or all the partners; and all the said persons shall obey the award made thereupon, and all such orders as shall be made by the said justice in the matters in dispute, and shall be subject to the same proceedings and consequences for refusing or delaying to abide by the same, as if the proceedings had been had against the principal, or against all the partners.

Masters may depute another person to act for them.

§ 15. It shall be lawful in all cases for any master or workman, by writing under his hand, to authorize any person to act for him, in submitting to arbitration and attending arbitrators or justices touching the matter of any arbitration.

As to the master becoming bankrupt after proceedings commenced.

§ 16. In all cases where any proceedings may be had against a master, or where such proceedings shall have been commenced, and the master shall become bankrupt, or any assignment of his estate or effects shall have been made under the said bankruptcy, or otherwise by deed or in law, the factor or trustee upon, or the assignees of such estate or effects, shall be liable to the proceedings authorized by this act against the master, as fully as the master was before the bankruptcy or assignment; and such proceedings may be commenced or carried on against such factor, trustee, assignee, or assignees, who shall abide by the award or order which shall be made by the said justices, and shall be subject to proceedings and consequences for wilfully refusing or delaying to abide by the same, as if the proceedings had been had against the master before his bankruptcy or assignment; provided that all sums to be paid in pursuance of such award or order shall be recoverable only out of the estate or effects of such master, and not out of the proper money of such factor, trustee, or assignees.

Complainant a married woman or infant.

§ 17. Where any married woman, or infant under the age of twenty-one years, shall have cause of complaint, such complaint may be lodged, and all further proceedings thereupon had, by and in the name of the husband of such married woman, and of the father, or, if dead, of the mother, or, if on the death of both parents, of any of the kindred of any such infant, or of the surety or sureties in any indenture of apprenticeship of any such infant, being an apprentice, or of any person nomi-

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Arbitrators (4 *Geo.* 4. c. 96).

nated by such infant, if he shall not have parent, kindred, or surety; and all such proceedings shall be as effectual, valid, and binding, as if such married women were sole, and such infants were of full age.

Tickets of particulars to be given out with work.

§ 18. With every piece of work given out by the manufacturer to a workman, there shall (if both parties are agreed) be delivered a note or ticket, in such form as the said parties shall mutually agree upon; and which said note or ticket, in the event of dispute, shall be evidence of all matters mentioned therein.

Duplicates of such tickets.

§ 19. And a duplicate of every such note or ticket shall be made and kept by the master or agent, which duplicate shall be evidence of all the matters therein contained, in case the workman shall not produce to the arbitrators or the said justice, the said note or ticket delivered to him.

Manufacturers receiving articles without objection.

§ 20. It shall not be allowable to any manufacturer, who shall have received into his possession any article, without objection made within twenty-four hours, by himself, or his clerk or foreman, afterwards to make any complaint on account of work so received.

Extension of the time for making the award.

§ 21. If the parties shall think it expedient, or be desirous to extend the time hereby limited for making the award, it shall be lawful for them to extend the same accordingly by endorsement, according to the form in the schedule, on the back of the order of the justice, certifying the appointment of the referees, to be signed by both of them in the presence of one or more witness or witnesses.

Form of award.

§ 22. The award shall be drawn up and written at the foot, or upon the back of the said order, certifying the appointment of the referees, according to the form in the schedule of the act (1).

Acknowledgment of award.

§ 23. Upon fulfilment of the award, the same shall be acknowledged by the party in whose behalf the same was made, by an acknowledgment (2) at the foot of the award, in the form given in the schedule, which, with the award, shall thereupon be delivered to the party fulfilling the same.

The performance of the award may be enforced by distress and imprisonment.

§ 24. If any party shall refuse or delay to fulfil an award under this act for the space of two days after the same shall have been reduced into writing, it shall be lawful for any such justice, on the application of the party aggrieved, and he is hereby required, by warrant under his hand, to cause the sum of money directed to be paid by such award to be levied by distress and sale, together with all costs attending such distress and sale, such sale to take place within such time, not exceeding five days, as the said justice shall think proper; and the overplus, if any, to be rendered to the owners; and in case it shall appear by any return to such warrant that no sufficient distress can be readily had, it shall be lawful for any such justice, and he is hereby required, by war-

(1) See this form, *post*. "AWARD."

(2) See *post*. "AWARD."

rant under his hand, to commit the person liable to the common gaol, or some house of correction within his jurisdiction, there to remain without bail for not exceeding three months.

In certain cases the defaulter committed to prison.

§ 25. Where the recovery of such money by distress and sale may appear to the justice or justices to be attended with consequences ruinous, or in an especial manner injurious to the defaulter and his family, the said justice or justices shall withhold such warrant, and commit the defaulter to the common gaol, or some house of correction within his jurisdiction, there to remain without bail for not exceeding three months.

On payment of the sum awarded, with costs, the party shall be discharged from prison.

§ 26. Where any person shall be committed to prison for refusing or delaying to fulfil an award, and such person shall, at any time during the period of imprisonment, pay to the governor or keeper of the prison the full amount of the sum awarded, with all reasonable expenses, it shall be lawful for such governor or keeper, and he is hereby required forthwith to discharge such person from his custody.

No appeal.

§ 28. No appeal or certiorari shall lie against any proceedings under this act.

§ 29. No proceedings under this act shall be invalid for want of form.

Fees.

§ 30. And a table of fees, signed by the clerk to such justices, shall be hung up in every place where any general or quarter sessions, or petty or other sessions shall be held.

Costs and expenses how to be settled.

§ 31. All costs, time, and expenses attending the application to justices, to be made under this act, and of the arbitration pursuant thereon, shall be settled by the arbitrators; and where the same shall be determined by any justice pursuant to this act, then the costs, time, and expenses aforesaid shall be settled by such justice; and where the arbitrators cannot agree as to the costs, time, and expenses, the same shall be settled by the justice by whom the said arbitrators were named, and, in case of his absence or indisposition, by any justice for the said county or place: Provided always, that no master manufacturer, his foreman, or agent, shall in any case be allowed for costs, time, or expenses, by the said justice, unless it shall appear to him that the proceedings of the workmen were vexatious and oppressive.

Exemption from stamp.

§ 32. Every agreement, submission, award, ticket, matter, or thing, under this act, may be drawn up and written upon unstamped paper.

Limitation of actions.

§ 33. No action shall be brought against any arbitrator, justice, constable, headborough, or other officer, or against any other person, for any thing done under this act, unless such action shall be brought within six calendar months.

APPOINTMENTS.

Attorney (admission to copyholds).

No. LXXVII.

An Appointment of an Attorney (1) *for admission to Copyhold Premises.*

KNOW ALL MEN BY THESE PRESENTS, that I (*the principal*) (2) of, &c. [eldest son and heir [*as the case may be*] of , deceased] one of the customary or copyhold tenants of the manor of , in the county of , according to the custom of the said manor,

Appointment of attorney.

HAVE made, ordained, deputed, constituted, and appointed, and by these presents Do make, ordain, depute, constitute, and appoint (3) (*the attorney*) of, &c. my true and lawful attorney for me the said (*principal*), and in my name, place, and stead, to appear at the next general or special court baron, to be holden for the said manor of , or at any other subsequent court baron to be holden for the said manor, and then and there for me and for my sole use and benefit, to pray admittance unto and be admitted tenant (4) of ALL

To appear for the principal.

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(1) See *post*. No. LXXVIII. p. 254.

Infants and feme coverts may be admitted by attorney.

(2) Infants and feme coverts are in general incapable of appointing an attorney; there is an exception, however, in the case of an admission to copyhold premises, for the 9 Geo. 1. c. 29. s. 1. enacts, that where any infant or feme covert shall be entitled by devise or descent to any copyhold premises, it shall be lawful for such infant or feme covert in person, or such feme covert by her attorney, or such infant by his or her guardian, or in case he or she shall have no guardian, then by his or her attorney or attornies (for which purpose such infants and feme coverts shall be and are thereby empowered by writing under his or her hand and seal respectively to appoint an attorney or attornies in his or her behalf), to come to and appear at one of the three next courts to be holden for the manor, and there to offer themselves to be admitted tenants to the premises so descended, or come to the use of such infant or feme covert.

Two attornies.

(3) If two persons be appointed attornies, see *post*. p. 255. n. (1).

Previous surrender.

(4) If the admittance be made in consequence of a previous surrender, add here,

"On the surrender of , at a special court, (*or as the case may be*) of the said manor holden at , in and for the said manor, on the day of last past, of ALL," &c.

APPOINTMENTS.

Attorney (admission to copyholds).

that copyhold, or customary messuage, &c. (1) To the end, intent, and purpose that I the said (*principal*), my heirs and assigns, may hold the same by copy of court roll, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services therefore due and of right accustomed; and for me and in my behalf to pay all such fines, dues, and monies as shall then and there be payable for or by reason of such admittance. AND generally for me the said (*principal*), and in my name, to do and execute all and every such acts and things as shall or may be necessary and requisite for procuring me the said (*principal*) to be admitted a copyhold or customary tenant of the said manor, as fully and effectually to all intents and purposes whatsoever, as I the said (*principal*) could or might do if I were personally present (2); I hereby promising and agreeing to repay unto my said attorney all such sum and sums of money, costs, charges, and expences as he shall be required to pay, or shall sustain or be put unto, in the execution of the trusts hereby in him reposed, or the matters and things aforesaid, or any of them. IN WITNESS, &c.

And to be admitted to the premises.

To do all necessary acts.

Confirmation.

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(1) Insert here a particular description of the premises. Parcels.

(2) If the attorney is to have power to appoint an attorney, see *post*. p. 256. Sub-attorney.

*** As to the execution of deeds by the attorney, see *post*. p. 264. Execution by attorney.

APPOINTMENTS.

Attorney (collect debts).

No. LXXVIII.

An Appointment of an Attorney *to Collect Debts.*

Recital of debts.

TO ALL TO WHOM THESE PRESENTS (1) SHALL COME. I (*the principal*) of, &c., send greeting. WHEREAS I (2) the said (*principal*) have various debts and monies due to me from certain persons resident in or about , which my avocations in business render it inconvenient for me to demand in person [*or as the case may be*]. AND WHEREAS the said debts and monies are, or are in-

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Letters of attorney should be in writing.

(1) It is said in books of high authority that every delegation of authority must be by deed; see Co. Lit. 48. b.; Roll. Ab. 8. pl. 4; Salk. 96; but as no estate or interest in the subject of the power passes to the person delegated, and all that is requisite is, that the authority given should be so explicit as to be certain in its object, writing alone should seem to be all that can be requisite. This observation, however, must be understood not to extend to cases where the power is to execute a deed, in which case the authority must also be by deed. See Streiglitz v. Egginton, 1 Holt, 141.

By and to whom letters of attorney may be made.

(2) Generally speaking, letters of attorney may be made *by* all persons who can themselves do the thing delegated to be done by another (except only in the case of an infant, who, although he may do some acts for his own benefit, is incapable of making an attorney; Zouch v. Parsons, 3 Burr. 1804); or who are capable of binding themselves by contract, but by no others.—Letters of attorney may, however, be given *to* many persons who are incapable of making them; the reason of which difference is, that the delegating an authority to another requires a free exercise of deliberation and judgment as to the propriety and consequences of doing so, whilst the acting for another under such a power is not only in most cases a ministerial office, requiring nothing more than following the direction given by the principal; but where otherwise, the act done is considered to be the act rather of the principal himself than of his attorney, and therefore if sui juris must be supposed competent to judge of the ability and capacity of the person he appoints to do it. Hence, although a feme covert, infant, or idiot, or the like, cannot make a valid attorney for want of that free agency which is necessary in order to enable them to bind themselves, yet they may be attornies for others. See Co. Lit. 52. a. 112. a. Perk. s. 148. 187. 199.

APPOINTMENTS.

Attorney (collect debts).

tended to be particularly mentioned in the schedule or inventory thereof hereunder written, or hereunto annexed. NOW KNOW YE, that I the said (*principal*) HAVE made, deputed, constituted, and appointed, and by these presents Do make, depute, constitute, and appoint (1) (*the attorney*) of, &c., my true and lawful attorney (2) for me and in my name, and for my own use and benefit, to ask, demand, sue for, recover, and receive of and from all and every the person or persons to whom it doth, shall, or may belong to pay the same, all and every the book and other debts, sum and sums of money now due and owing, or hereafter to become due and owing, unto me from all and every, or any of the persons whose names are mentioned in the schedule or inventory herein above referred to, all and every the sum and sums set opposite to their respective names, and also all such other sum and sums of money as I the said (*principal*) shall at any time hereafter in writing under my hand express to be due to me from them, or any or either of them, and upon receipt thereof, receipts, releases, and other proper and sufficient discharges and acquittances from time to time to make and give for the same, or any part thereof respectively; and upon non-payment of the said debts and monies, or any part thereof, to take, commence, exercise, and prosecute for me and in my name, and on my behalf, all necessary, lawful, or proper powers, remedies, actions, suits, expedients, and means for the recovery, receiving, obtaining, and getting in the same, with full power to compromise or compound

Appointment of attorney.

To receive debts.

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(1) If two persons be appointed attornies, say,

Two attornies.

"Do make, depute, constitute, and appoint (*the attornies*) of, &c. jointly, and each of them separately, my true and lawful attornies and attorney, for me, &c." *as above.*

(2) Powers of attorney being merely the delegation of authorities founded on a confidence reposed by the principal in his attorney, which it is fit he should be at liberty to withdraw when he thinks proper, are holden to be in their nature revocable at pleasure, except where given to a bonâ fide purchaser or creditor; Watson v. King, 4 Campb. 274; but even in such case they will be void as against the general creditors of the principal after his decease; Mitchell v. Eades, Prec. Ch. 125; Lepard v. Vernon, 2 Ves. and Bea. 53; the death of the principal being in all cases a revocation of the power, for per Ellenborough, Ch. J. "how can a valid act be done in the name of a dead man?" See Watson v. King, 4 Campb. 274; Wallace v. Cooke, 5 Esp. 117; and therefore although payment be actually made to the attorney, if after the death of the principal, it will be bad by the common law, Wallace v. Cook, ubi sup. and see Co. Lit. 52. b.; but if the payment be made before the death of the principal was known, it is said to be good by the civil law; Poth. Contr. par. 1. c. 6. ar. 1. s. 168.

Powers of attorney revocable in their nature.

APPOINTMENTS.

Attorney (collect debts).

for any debt or debts, and accept a part for or in lieu of the whole thereof, and to give time or indulgence for payment of any debt or debts, and in the mean time accept such security for payment thereof as he shall think proper; and to submit any debt or debts, or doubt or dispute in relation to any debt or debts to arbitration, and sign and execute for me and in my name any deed or writing for the purpose of giving effect to such submission as fully and effectually to all intents and purposes whatsoever, as I myself might or could have done, taken, commenced, exercised, or prosecuted, or done, or assented to if personally present, and these presents had not been made.

Power to substitute other attornies.

AND also from time to time to substitute, nominate, and appoint one or more attorney or attornies under him the said (*attorney*), for all or any of the purposes aforesaid, and again at his pleasure to displace and remove as he shall see occasion or think fit (1); I the said (*principal*) hereby ratifying and allowing, and promising and agreeing from time to time, and at all times hereafter, to ratify, allow, and confirm and give effect unto all and whatsoever he the said (*attorney*), or his lawful attorney or attornies to be by him from time to time nominated and appointed, in pursuance of the power hereinbefore given him for that pur-

Confirmation.

Covenants by the attorney in general cases unnecessary.

(1) There may also be added, should the particular circumstance of the case render it desirable, a covenant on the part of the attorney, that he will pay over the money which may come into his hands in pursuance of the power, unto the principal; in which case, the deed should be by indenture, and the attorney be a party, and a counter part be in the hands of the principal; but as a misapplication of the monies received by the attorney would be equally a breach of trust as if he had expressly covenanted for their due application, there seems to be no reason for its insertion in general cases, and a bond to account, if thought necessary, (see *post*), seems preferable. The form of such a covenant, however, is here subjoined:

Attorney will account.

"And the said (*attorney*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*principal*), his executors, administrators, and assigns, that he the said (*attorney*), his executors, and administrators, shall and will from time to time well and truly pay or cause to be paid unto the said (*principal*), his executors, administrators, and assigns, or unto such other person or persons, and at such time or times, and for such purpose or purposes as he or they shall under his or their hand or respective hands direct or appoint, all and every such sum and sums of money which he or they, or any of them, shall or may receive, or which shall come to his or their hand or respective hands, under or by virtue of these presents."

pose, shall lawfully do or cause to be done in and concerning the premises by virtue of these presents (1). IN WITNESS, &c.

APPOINTMENTS.
Attorney (collect debts).

(1) If the principal have already given other powers of attorney for other purposes, which are still in force, the following proviso may, for the sake of precaution, be added,

Powers previously given for other purposes.

"Provided always that these presents, or the power hereby given, shall in no wise extend nor be deemed nor construed to extend, to repeal, revoke, determine, or make void any former or other power or powers of attorney by me at any time heretofore given or delegated to the said (*attorney*), or any person or persons whomsoever, for any distinct or other purpose or purposes; but such other power and powers shall still remain and be of the same authority, validity, force, and effect, as if these presents had not been made."

This power not to repeal other powers given for other purposes.

APPOINTMENTS.

Attorney (deliver seisin).

No. LXXIX.

An Appointment of an Attorney *to deliver seisin* (1).

Recital of feoffment.

Appointment of attorney.

TO ALL TO WHOM THESE PRESENTS (2) SHALL COME, (*the feoffor*) of, &c. sends greeting. WHEREAS by an indenture of feoffment, bearing or intended to bear even date (3) with these presents, and made or expressed to be made between the said (*feoffor*) of the one part, and the (*feoffee*) of, &c. of the other part, the said (*feoffor*) HATH granted and enfeoffed a messuage or dwelling house, with the lands, tenements, hereditaments, and appurtenances thereunto belonging, situated at , in the county of , in the said indenture of feoffment more particularly described, unto and to the use of the said (*feoffee*) and his heirs for ever. NOW KNOW YE that the said (*feoffor*) HATH nominated, constituted and appointed, and by these presents DOTH nominate, constitute and appoint (4)

Powers usually inserted in the deed.

(1) Powers of attorney to deliver and receive seisin, are usually inserted in the deed itself under which those ceremonies are requisite; in which case, the proper form will be found *ante*, Bart. Prec. Vol. 1. p. 100; but, as cases may arise where the feoffor or feoffee may be at the time of the execution of the deed of feoffment unable either to give or accept of livery in person, or unwilling to part with the deed itself, for the purpose of its being done by another, the form of powers for these purposes are here given by separate instruments.

Must be by deed.

(2) A delegation or authority to any person to deliver or receive seisin for another must be by deed, in order that it may appear that the authority was strictly pursued; this may be done either by deed indented, or by deed poll, but it is said, that if the deed be by indenture, it will not be good unless the attorney be a party to it; Co. Lit. 52, b. but quære, as there appears to be no sufficient reason for the distinction; and see ibid. n. (4) 4 Elem. Conv. 478.

Feoffment must be correctly recited.

(3) Care must be taken that the recital of the deed of feoffment be correctly made, particularly as to the day on which it bears date, for if there be any mis-recital, the livery will be void. Mariot v. Smith, Cro. Eliz. 603.

Who may be attornies.

(4) There are few (if any) persons considered by the law as incapable to be made attornies for the purpose of delivering seisin. Infants, feme coverts, persons attainted, outlawed, excommunicated, villeins, aliens, &c., are therefore equally eligible for this purpose as any other persons, because no interest proceeds from the attorney, and his acts are merely ministerial. Thus, a feme covert may be attorney to deliver seisin to her husband, or a husband to his wife, and so may he in reversion be an attorney to make livery to the tenant for life. Co. Lit. 52. a.

(*the attorney*) (1) of, &c. his true and lawful attorney, for him, and in his name and stead, into and upon the several messuages, lands, tenements, and hereditaments in the said indenture of feoffment described, and thereby granted and enfeoffed, or otherwise assured, or mentioned or intended so to be, or into any part thereof in the name of the whole, to enter, and full, quiet, and peaceable possession and seisin thereof, for and in the name of him the said (*feoffor*), to take, and have immediately upon, or at any time after the execution hereof (2); and such possession and seisin being so had and taken, the like possession and seisin thereof, or of any part thereof in the name of the whole unto the said (*feoffee*), his heirs and assigns, or to his or their certain attorney or attornies, lawfully appointed and authorized to receive the same, to give and deliver according to the form and effect, and true intent and meaning of the said indenture (3). AND he the said (*feoffor*) doth hereby allow, ratify, and confirm, and promise and agree to allow, ratify, and confirm, all and whatsoever his said attorney shall lawfully do in the premises, by virtue of these presents. IN WITNESS, &c.

APPOINTMENTS.

Attorney (*deliver seisin*).

To enter upon premises.

And give seisin thereof to feoffee.

To deliver seisin.

Confirmation.

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(1) If there be two attornies appointed, see *ante*, p. 255. n. (1). Two attornies.

(2) It is not necessary that seisin should be delivered on the day of the date of the feoffment, see Doe dem. Heale v. Rashleigh, 3 Barn. and Ald. 156.

(3) If the attorney is to have power to appoint a substitute, see *ante*, p. 256. Sub-attorney.

APPOINTMENTS.

Attorney (execute deed).

No. LXXX.

An Appointment of an Attorney (1) *to* execute *a* Conveyance *of an Estate to a Purchaser.*

Variations where it is to sell, and execute the Conveyance. Where to execute a lease.

Recital of principal having contracted for purchase.

But title not yet deduced.

Appointment of attorney.

TO ALL TO WHOM THESE PRESENTS SHALL COME. I (*the vendor*) of, &c. send greeting. WHEREAS (2) I have contracted (3) with (*the purchaser*) of, &c. for the sale to him of a certain messuage or tenement, situate at , in the parish of , in the county of , for the sum of . AND WHEREAS a clear title to the said hereditaments is not yet deduced to the satisfaction of the said (*purchaser*), and I the said (*vendor*) being about to leave the United Kingdom, am desirous of authorising (*the attorney*) of, &c. to complete the said contract on my part, and to execute the proper conveyances and assurances thereof. NOW KNOW YE, that I the said (*vendor*), HAVE made, ordained, constituted, and appointed, and by these presents DO make, ordain, constitute, and appoint the said (*attorney*) my

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(1) See *ante* No. LXXVIII. p. 254. notes.

Power to sell estate.

(2) If the power be to sell an estate, say,

"WHEREAS I am about to reside beyond the seas, and am desirous of authorizing (*the attorney*) of, &c. to sell and dispose of my messuages, lands, tenements, and hereditaments, situated at , in the county of , in case I should not be able to make sale thereof during my residence in this kingdom. NOW KNOW YE, &c." *as above.*

To execute a lease.

(3) If the power be to execute a lease, say,

"WHEREAS I have agreed with (*the lessee*) of, &c. to grant a lease unto him of a certain messuage, or tenement and premises, situated at , in the county of , for the term of years, at the yearly rent of . AND WHEREAS I being about to leave, &c." *as above.*

APPOINTMENTS.

Attorney (execute deed).

lawful attorney, irrevocable, for me, and in my name, place, and stead (1), and for my use, to ask, demand, and receive of and from the said (*purchaser*), his executors, administrators, or assigns, the said purchase-money, or sum of , and upon the receipt thereof, for me and in my name, and as my act and deed, to seal (2),

To receive the purchase money.

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(1) If the power be for the sale of the estate, say,

Power to sell.

"For me, and in my name, place, and stead, to make sale and dispose of all and singular the said hereditaments with the appurtenances, either by private contract or by public auction; and either together or in separate parcels or lots, for such price or prices, or sum or sums of money, as to him shall seem reasonable; and upon the receipt of the consideration or purchase-money of or for the same, or of any part thereof, a good sufficient acquittance and discharge, for me, and in my name, to make, sign, and give; and further, for me, and in my place and stead, and in my name, to sign and seal, and as my act and deed deliver, any deed or deeds, instrument or instruments in writing; and to do and execute all and every or any other act and thing, and acts and things whatsoever, which may be necessary or proper, or which the counsel in the law of the purchaser or purchasers thereof, or of his or their heirs or assigns, may deem and judge, and under his or their hand or respective hands declare to be necessary or proper, for carrying any agreement for the purchase into complete effect and execution, according to the true intent and meaning thereof, and of the parties thereto; and so and in such manner, that all and every the estate, right, title, and interest of me the said (*vendor*), in or to the said hereditaments and premises, with the appurtenances, shall and may be effectually and absolutely conveyed, transferred, and assured, unto and to the use of the purchaser or respective purchasers thereof, his and their heirs and assigns for ever; or unto such other person or persons, and for such estate or estates therein, and in such manner and form, as he or they shall or may direct or appoint, free and clear of and from all and all manner of liens, charges, and incumbrances whatsoever."

(2) If the engrossment of the conveyance have been already prepared and approved of by the vendor, say,

Conveyance already engrossed.

"To fill up the blanks or spaces at the top or beginning of the indenture to which these presents are annexed, and of an indenture or bargain and sale for a year, to accompany the same, with the day of the month and year whereon the same indentures respectively shall be sealed and delivered, or with any other proper date or dates. And

APPOINTMENTS.

Attorney (execute deed).

deliver and execute (1), unto and for the use of the said (*purchaser*), his heirs and assigns, or otherwise as he or they shall direct, all and every necessary or proper conveyance or assurance of the said messuage, or tenement, lands, and hereditaments; or any covenant for the production of the title-deeds relating thereto, or to deliver over the same to the said (*purchaser*), his heirs or assigns; and also for me and on my behalf to subscribe to the receipt to be written on the back of the said conveyance the name of me the said (*vendor*) (2); and further, for me, and in my name, and as my act and deed, to do and perfect all and every other act, matter, and thing whatsoever, which shall or may be deemed necessary, proper, or expedient for the fully (3), absolutely, and effectually vesting and transferring the

And execute conveyance.

To sign receipt for purchase money.

To do all necessary acts.

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also to fill up, or cause to be filled up, the blanks, or spaces at the bottom or end of the same indentures respectively, by and with the name, description, and addition of him my said attorney [*or* of such one of them my said attornies, who shall act in the premises by virtue hereof]; and when and after the said blanks or spaces shall be so filled up, then at the foot or bottom of the said deed, to subscribe the name of me the said (*vendor*), and to seal and deliver the same indentures respectively, for me, in my name, and as my act and deed, unto and for the said (*purchaser*), his heirs and assigns, or otherwise, as he or they shall direct."

To execute a lease.

(1) If the power be to execute a lease, say,

"And as my act and deed, to seal, deliver, and execute, unto and for the benefit of the said (*lessee*), his executors, administrators, and assigns, a good, valid, and effectual demise, or lease, of the said messuage or tenement and premises for the term of years, under the clear yearly rent of , payable quarterly, and with such covenants, provisoes, and agreements, as are usual in leases between landlord and tenant; or as the said (*attorney*) shall think necessary or proper to be inserted; and further, for me and in my name, and as my act and deed, to do and perfect, &c." *as above.*

Deed to be enrolled.

(2) If the deed be intended to be enrolled, add,

"And further within the space of three months next after the date of the conveyance so to be made as aforesaid, and after the execution thereof to appear for me and to acknowledge such deed before one of the justices for the time being of some one of his Majesty's courts at Westminster.

Conveyance already engrossed.

(3) If the engrossment be already prepared, say,

"For the full, legal, effectual, and complete execution and acknowledgment (and enrolment and recording, if necessary or expedient)

said hereditaments and premises, and the rents, issues, and profits thereof, and all my estate, right, and title therein or thereto, in and to the said (*purchaser*), his heirs and assigns, as fully, amply, and beneficially, to all intents, constructions, and purposes whatsoever, as I myself might or could do if personally present, and these presents had not been made; and so, and in such manner, as that there may be made a good and perfect title and conveyance unto and to the use of the said (*purchaser*), his heirs and assigns for ever (1). AND I do hereby accordingly declare, that all and every the receipts, releases, conveyances, instruments, and assurances, and acts, deeds, matters, and things, which shall or may be by him my said attorney given, made, done, or committed, for that or those purpose or purposes, shall be as good, valid, and effective, to all intents and purposes whatsoever, as if the same had been signed, sealed, delivered, given, or made, or done, by me, in my own proper person (2). I the said (*vendor*) hereby giving my said attorney the whole of my power and authority in the premises, and hereby allowing, ratifying, and confirming, and promising and agreeing, from time to time, and at

APPOINTMENTS. *Attorney (execute deed).*

Acts done by attorney to be as valid as if done by principal.

Confirmation.

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of the said indenture, or of any other indenture or indentures, or deeds, or instruments of the like tenor or purport, or in confirmation of the said hereditaments, or any part thereof, although the same shall or may be thereby conveyed or assured in other or different forms or terms, and although the premises in such other deed or deeds, shall or may be differently or otherwise described, the better to ascertain the same."

(1) The following proviso is sometimes added for precaution-sake, but it does not appear to be necessary:

Power not to extend to other acts than those specified.

"PROVIDED ALWAYS that these presents, or the power hereby given, shall in no wise extend to appoint the said (*attorney*) to or for any other intent or purpose, or to do or perform any other act, deed, matter, or thing, than what is hereby particularly expressed, referred to, or implied, for the purposes aforesaid, but solely and only for the making, executing, perfecting, and completing, unto and to the use of the said (*purchaser*), his heirs and assigns, such indentures, deeds, writings, and assurances, as shall or may be deemed necessary or expedient for the purpose of conveying and assuring a clear and indefeazible estate or inheritance in the fee simple of and in the said hereditaments and premises according to the true intent and meaning thereof and of these presents."

Account.

(2) Here may be added a covenant for the attorney to account for the purchase money, see *ante*, p. 256. n (1).

APPOINTMENTS.

Attorney (execute deed).

all times, to allow, ratify, and confirm, and hold for good, firm, valid, and effectual, all and whatsoever my said attorney shall lawfully do or cause to be done, in or concerning the premises by virtue of these presents. IN WITNESS, &c.

Attorney must sign the name of principal.

*** Where one person executes a deed for another under a power of attorney, he should execute it in the name of his principal; Coomb's Case, 9 Co. 76; Frontier v. Small, 2 Lord Raym. 1418.; 1 Stra. 705. S. C.; White v. Cuyler, 6 Durnf. and E. 176. But although the act done must be the act of the principal and not of the attorney who is authorized to do it, yet if the deed be executed in the principal's name, it matters not in what form of words such execution is denoted by the signature of the names; as if opposite the seal be written, "for A. B. the principal, C. D. the attorney." Wilks v. Back, 2 East, 142; Streiglitz v. Egginton, 1 Holt, 141. The proper form however is as follows:

Form of execution of deed by attorney.

"IN WITNESS whereof (*the attorney*) of, &c., the attorney of and for the said (*principal*), lawfully authorized in that behalf by a certain power of attorney, an attested copy whereof is hereupon indorsed, or hereunto annexed, hath hereunto set the name and seal of the said (*principal*) the day and year first above written."

A. B. (*principal's name*).
by
C. D. (*attorney*) his attorney duly authorised.

Delivery.

In delivering the deed, the attorney should make use of words to the following effect:

"I deliver this as the act and deed of the within named (*principal*).

Attestation.

The attestation of the execution of the deed may be thus:

"Signed, sealed, and delivered by (*the attorney*), as the attorney, in the name, and as the act and deed of the within named (*principal*), in the presence of us."

No. LXXXI.

An Appointment of an Attorney to act for another in all his affairs on his leaving the Kingdom.

Variations providing for the decease of the attorney during the absence of the principal.

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the principal*) of, &c. sends greeting. WHEREAS the said (*principal*) being about to leave the United Kingdom of Great Britain and Ireland, and to reside for a time in foreign parts, hath requested (*the attorney*) of, &c., to take upon himself the care of his estate and property, and to act for him in his affairs during his absence, which the said (*attorney*) hath consented to do. NOW THEREFORE KNOW YE, that the said (*principal*) HATH made, deputed, constituted, and appointed, and in his place and stead put, and by these presents doth make, ordain, depute, constitute, and appoint, and in his place and stead, put the said (*attorney*) his true and lawful attorney, to act in and conduct and manage all and every the affairs, matters, and things of him the said (*principal*), being or happening within the United Kingdom of Great Britain and Ireland during the absence of him the said (*principal*), and for that purpose doth by these presents authorize and empower him the said (*attorney*), in the name and on the part and behalf of him the said (*principal*), to ask, demand, sue for, recover, and receive of and from all and every person and persons whomsoever, and also of and from all and every body or bodies, politic or corporate, in the said United Kingdom, whom it doth, shall, or may concern, all and every sum and sums of money, debts, dues, goods, wares, merchandizes, chattels, effects, and things, of what nature or description soever, which now are, or is, or which at any time or times during the subsistence of these presents, shall or may be, or become due, owing, payable, or belonging to the said (*principal*), in or by any right, title, ways, or means howsoever; and also to ask, demand, and receive of and from all and every the person or persons to whom it doth, shall or may belong to pay the same, all and every the legacies, gifts, and bequests

Recital of intention to leave the kingdom.

Appointment of attorney.

To receive debts, &c.

To receive legacies

APPOINTMENTS.

Attorney (general power).

which may at any time hereafter during the absence of the said (*principal*), be given, bequeathed, or left to him the said (*principal*), by any person or persons whomsoever, or otherwise become due, or be payable to him the said (*principal*), on any account whatsoever; and upon receipt thereof, or of any part thereof, for and in the name of him the said (*principal*), or of him the said (*attorney*), or otherwise, as the case may require, to make, sign, execute, and deliver such receipts, releases, or other discharges, acquittances, or acknowledgments for the same respectively, as he the said (*attorney*) shall think fit, or be advised. AND also for him the said (*principal*), and in his name to settle any account or accounts, or reckoning or reckonings whatsoever wherein the said (*principal*) now is, or at any time or times hereafter shall or may be in anywise interested or concerned with any person or persons whomsoever, and to pay or receive the balance or balances thereof, as the case may require. AND also for him the said (*principal*), and in his name or otherwise, to receive all and every sum and sums of money whatsoever, which now is, or are due, arising, or belonging to the said (*principal*), upon or by virtue of any mortgage or mortgages, or other security or securities whatsoever; and on receipt thereof, for and in the name of the said (*principal*), to make, sign, execute, and give good and sufficient releases, acquittances, or other discharges for the same; and also to sign, seal, and execute, make, and deliver all proper and sufficient re-conveyances, releases, and other assurances of the lands, tenements, hereditaments, and property, which shall have been mortgaged for payment thereof. AND also for him the said (*principal*), and in his name to or otherwise to sign the certificate or certificates of any bankrupt or bankrupts, and compound with any person or persons, for or in respect of the aforesaid debts, or of any sums of money, or any other debt, debts or demands whatsoever, which now is or are, or shall or may at any time or times hereafter become due or payable to him the said (*principal*), and take or receive any composition or dividend thereof, or thereupon, and give receipts, releases, or other discharges for the whole of the same debts, sums or demands, or to submit to arbitration all and every or any such debts or demands, and all and every other claims, rights, matters, and things due to or concerning him the said (*principal*), as the said (*attorney*) shall think most advisable for the benefit and advantage of the said (*principal*), and for that purpose, and in his name, to enter into, make, sign, execute, and deliver such bonds of arbitration or other deeds or instruments as are usual in like cases. AND also for him the said (*principal*), and in

and give receipts for the same.

To settle accounts.

To receive money due upon mortgage or other security.

To give receipts for the same.

And to execute re-conveyances.

To compound debts.

To submit claims to arbitration.

To represent principal in courts, &c.

Attorney (general power).

his name to appear, and his person to represent in all or any court or courts, and before all or any magistrates or officers of or in law or equity whatsoever, as by the said (*attorney*) shall be thought advisable, or as he shall think fit, and to sue, arrest, distrain upon, imprison, and out of prison again to liberate, release, acquit, and discharge all and every or any person or persons whomsoever now indebted, or who shall or may at any time hereafter become indebted to the said (*principal*), or upon whom he now has or hereafter shall or may have any lawful claim or demand. AND also for and in the name of the said (*principal*), or otherwise to commence any action or actions, suit or suits, as well real as personal or mixed, in any court of law or equity, for the recovery of any debt, sum or sums of money, right, title, interest, property, matter, or thing whatsoever, now due or payable, or to become due or payable, or in anywise belonging to the said (*principal*), by any means, or on any account whatsoever; and the same action or actions, suit or suits, to prosecute and follow, or to discontinue or become nonsuit therein, if he the said (*attorney*) shall see cause. AND also for him the said (*principal*), and in his name to use and take such other lawful ways and means for the recovering, receiving, obtaining, or getting in any such sum and sums of money, or other things whatsoever, which is, are, shall, or may be, or by the said (*attorney*) shall be conceived or thought to be due, owing, belonging, or payable unto the said (*principal*), by any person or persons whomsoever; and also to appoint any attorney or attornies, or solicitor or solicitors at law or in equity, and to give and sign any warrant or warrants to prosecute and defend in the premises aforesaid, or any of them, as occasion may require, either in the name of the said (*principal*), or in the name of him the said (*attorney*). AND also to enter into and upon all and singular the messuages, farms, lands, hereditaments, and real estates whatsoever, of him the said (*principal*); and to view, search, and see the state, condition, and defects of the reparation thereof, and forthwith to give proper notices and directions for repairing the same, and to oversee, set, let, manage, and improve the same, to the best advantage (1). AND also from time to time to fell or cut down any wood or underwood, timber or other trees, standing or being on any of the said lands and hereditaments of the said (*principal*), as he the

To commence actions.

To direct repairs.

To fell timber.

(1) It has not been considered necessary to insert a clause enabling the attorney to receive the dividends of any money the principal may have in the funds, as the directors of the bank will not take notice of any such power, unless prepared by themselves.

Bank Annuities.

APPOINTMENTS.

Attorney (general power).

the said attorney shall from time to time think fit (1). IN WITNESS, &c.

Death of attorney.

(1) If the intended residence of the principal be at a great distance, and likely to be of long duration, it will be proper that he should provide for the event of the attorney dying during his absence; this may be done, either by appointing two or more attorneys in the first instance, as *ante*, p. 255, n. (1). or by giving the attorney power to appoint a person to succeed him in the event of his own decease, or by the principal naming one himself to act provisionally upon the decease of the first. The form of this latter appointment may be as follows:

Appointment of second attorney, to act on the decease of the first.

"AND WHEREAS the said (*principal*) being desirous of providing for the event of the decease of the said (*first attorney*) during the absence of him the said (*principal*), hath requested the said (*second attorney*) to take upon himself the care of the estate and effects of the said (*principal*), and to act for him in his absence, in the event of such decease as aforesaid, which he hath consented to do. NOW THEREFORE FURTHER KNOW YE, that the said (*principal*) HATH made, deputed, constituted, and appointed, and by these presents DOTH make, depute, constitute, and appoint the said (*second attorney*) his true and lawful attorney, from and immediately after the decease of the said (*first attorney*), in case he shall happen to depart this life during the absence of the said (*principal*), to act in and conduct and manage all and every the affairs, matters, and things of the said (*principal*), in such and the same, or like manner, in all respects as he the said (*first attorney*) could or might have done in his lifetime. AND the said (*principal*) doth hereby accordingly give and grant to and vest in him the said (*second attorney*), all and every such and the same or the like powers and authorities, in or concerning the premises in all things as are hereinbefore given and granted to or vested in the said (*first attorney*), and as if the name of the said (*second attorney*) had throughout these presents been inserted instead of the name of the said (*first attorney*). AND the said (*principal*) doth hereby ratify and confirm, and promise and agree to ratify and confirm, all and whatsoever the said (*second attorney*), or his lawful attorney or attornies, shall lawfully do or cause to be done in or about the premises by virtue of these presents." IN WITNESS, &c.

Attorney to account.

There may also be added a covenant by the attorney to account for monies received, as *ante*, p. 256, n. (1).

No. LXXXII.

**Appointment of an* Attorney *by Assignees of a Bankrupt, to act in the Bankrupt's affairs abroad, as well for particular as for general purposes.*

KNOW ALL MEN BY THESE PRESENTS, that (*assignees*) of, &c. assignees of the estate and effects of (*bankrupt*) of, &c. merchant, acting under or by virtue of a commission of bankruptcy awarded and issued, and now in prosecution against the said (*bankrupt*) bearing date at Westminster, on or about the day of , for divers good causes and considerations them hereunto moving, HAVE and each and every of them HATH made, ordained, nominated, constituted, and appointed, and by these presents Do and each of them DOTH make, ordain, nominate, constitute, and appoint (*attorney*) of, &c. in the United States of America, merchant [*or as the case may be*], the true and lawful attorney of them the said (*assignees*) for them as assignees as aforesaid, and in their names, to ask, demand, sue for, levy, recover, attach and receive of and from all and every person and persons whomsoever resident within the United States of North America aforesaid, who now is or are indebted unto the said (*bankrupt*) or unto his estate, or unto them the said (*assignees*) as such assignees as aforesaid, for or by reason of any cause, matter, account, or thing whatsoever, or who now hath or have in his, her, or their custody or power any goods, wares, merchandizes, effects or things whatsoever, of or belonging to the said (*bankrupt*) or to his estate, or to them the said (*assignees*) as such assignees as aforesaid, all and singular such sum and sums of money, both principal and interest, debts, goods, wares and merchandizes, and other things whatsoever, which such person or persons now is or are so indebted, or which such person or persons now hath or have, or shall or may have in his, her, or their custody, power, or possession of or belonging to the said (*bankrupt*) or to his estate, or to the said (*assignees*) as assignees as aforesaid; and to that end, with any person or persons to account, and to view, state, settle, and adjust all accounts whatsoever now depending, or which

Appointment of attorney.

To receive debts and merchandize.

Settle accounts.

APPOINTMENTS.

Attorney (general power by assignees).

shall or may be depending, between the said (*bankrupt*) or them the said (*assignees*) as such assignees as aforesaid, and every person and persons whomsoever; and the balance and balances of all and every such accounts for them the said (*assignees*) as such assignees as aforesaid, and in their names, and for them, to receive or otherwise to compound for the same, and to accept a part for the whole, as he the said (*attorney*) shall judge expedient or advisable; and for that purpose for them the said (*assignees*) as such assignees as aforesaid, and in their names, to appear in the proper court or courts, office or offices, in each and every or any of the United States of North America, and therein, or in any or either of them, to acknowledge satisfaction upon record for all or any judgment or judgments, or mortgage or mortgages, according to the laws and usages of the said United States, or in any or either of them; and upon recovery or receipt of such sum or sums of money, or any part thereof, or goods, wares and merchandizes, for them the said (*assignees*) as such assignees as aforesaid, and in their names, releases, acquittances, or other good, sufficient, and effectual discharges to sign, seal, execute, and deliver. And the said (*assignees*) as such assignees as aforesaid, do and each and every of them doth hereby authorise and empower the said (*attorney*) for them the said (*assignees*) as such assignees as aforesaid, and in their names, to prosecute and defend any action or actions, suit or suits, by or against the said (*assignees*) as such assignees as aforesaid, commenced or to be commenced, to a final close thereof, and to appear before all and every or any lords, judges, or justices, at any tribunal, or in any court or courts, in all and every or any of the said United States of North America, to answer, defend, and reply in and to all matters and things touching and concerning them the said (*assignees*) as such assignees as aforesaid, or touching or concerning the said (*bankrupt*) or his estate, property, and effects prior to his said bankruptcy; And moreover for the said (*assignees*) as such assignees as aforesaid, and in their names and in their behalf, if he the said (*attorney*) shall see fit, to compromise, conclude, refer to, and agree by arbitration all and every or any differences or disputes, which now are, or which shall or may be subsisting between the said (*bankrupt*) or the said (*assignees*) as such assignees as aforesaid, and any person or persons whomsoever in North America aforesaid: and for that purpose for them the said (*assignees*) as such assignees as aforesaid, and in their names, and as their respective act and deed, in due form of law, to sign, seal, execute, and deliver any bond or bonds, agreement or agreements of arbitration

Acknowledge satisfaction.

Give discharges.

Bring and defend actions.

Compromise differences.

Execute deeds.

APPOINTMENTS.

Attorney (general power by assignees).

or reference, which shall or may be requisite or proper, and to stand to, abide, and perform all and every award and awards to be made of and concerning all and every or any such matters in difference or dispute. And further, for them the said (*assignees*) as such assignees as aforesaid, and in their names, to enter into and upon all and every the lands, tenements, and hereditaments, real or personal, late of and belonging to the said (*bankrupt*) and now vested in and belonging to them the said (*assignees*) as such assignees as aforesaid, situated, lying, and being in the said province of or elsewhere in the said United States of North America, and to sell and dispose of all and every the same lands, tenements, and hereditaments, either entirely or in separate lots or parcels, to any person or persons whomsoever, for the most money and best price or prices that can be reasonably gotten for the same, either by public auction or private contract, as he the said (*attorney*) shall think most fitting and advantageous to the estate and creditors of the said (*bankrupt*); and upon receipt of the purchase money or monies for all and every or any of the said lands, tenements, and hereditaments, for them the said (*assignees*) as such assignees as aforesaid, and in their names, to make, give, and sign receipts, acquittances, or other sufficient discharges for the same to such person or persons who shall or may become the purchaser or purchasers thereof. And also, for them the said (*assignees*) as such assignees as aforesaid, and in their names, place, and stead, to sign, seal, and execute, and as their act and deed, in due form of law to deliver unto the purchaser or purchasers of all and every or any of the said lands, tenements, and hereditaments, such deed or deeds, conveyances and assurances in the law, as shall be fitting and necessary in that behalf, and as shall or may be reasonably advised, or required by the counsel in the law, of the said purchaser or purchasers, his, her, or their heirs or assigns, and that as fully and effectually to all intents and purposes as they the said (*assignees*) as such assignees as aforesaid, might or could do if personally present. And the said (*assignees*) as such assignees as aforesaid, do hereby further authorise and empower the said (*attorney*) in case the said lands, tenements, and hereditaments, or any part thereof, for default of purchasers or otherwise, shall not be sold or disposed of, to demise, lease, set and to farm, let the same to any sufficient and responsible person or persons whomsoever, for any term or terms of years in possession, as shall or may be judged most advisable in regard to the earliest and most expedient future sale thereof, and the best and most approved yearly rent or rents that can be reasonably had and obtained for

Sell estates,

and convey to purchasers,

and grant leases.

APPOINTMENTS.

Attorney (general power by assignees).

the same. And also, for them the said (*assignees*) as such assignees as aforesaid, and in their names, to ask, demand, and receive, and by all lawful ways and means to sue for, recover, and

Receive rents,

obtain of and from the present or future tenants or occupiers of the said lands, tenements, and hereditaments, or any part thereof, all and every sum and sums of money, rents, and arrears of rent, which now is or are, or shall or may, from time to time, until such sale as aforesaid, grow due and become payable to the said (*assignees*) as such assignees as aforesaid, from all and every or any of the said tenants respectively; and on non-payment thereof, or of any part thereof, for them, the said (*assignees*) as such assignees as aforesaid, and in their names, to enter into and upon all or any part of the said lands, tenements, and hereditaments, or any part or parcel thereof, and there to seize and distrain the goods, chattels, and effects of any tenant or tenants not paying his, her, or their rent or rents in due time, either in and upon the said premises, or any part thereof, or off the premises as the law of the said province of may permit; and the distress or distresses so had and taken to take, lead, drive, carry away, retain, and impound and keep until the said rents and arrears thereof shall be fully paid and satisfied, or the same shall otherwise be delivered by due course of law; and, if need be, all and singular the said goods and chattels and effects so distrained to sell and dispose of according to law, and to receive the monies arising from the sale thereof for the use of the said (*assignees*) as such assignees as aforesaid; or in the names of them the said (*assignees*) as such assignees as aforesaid, to proceed by action, suit, bill, or plaint, or by such other lawful ways and means for the recovery of the said rents and arrears of rent, or any part thereof, and thereupon in their names to give, sign, seal, and execute receipts, acquittances, or other discharges for the same. And the said (*assignees*) as such assignees as aforesaid, do hereby further authorise and empower the said (*attorney*) for them the said (*assignees*) as such assignees as aforesaid, and in their names to ask, demand, and receive, and by all lawful ways and means whatsoever to sue for, recover, and obtain of and from any person or persons whomsoever, all and every the deeds, evidences, and muniments whatsoever, relating to or touching or concerning the title of the said (*bankrupt*) to any the lands, tenements, and hereditaments herein-before mentioned, or any part or parcel thereof; and, upon receipt and recovery thereof, for them, the said (*assignees*) as such assignees as aforesaid, and in their names, to sign and give proper receipts, acquittances, and discharges for the same. And they

and distrain

or bring actions.

Obtain title-deeds.

APPOINTMENTS.

Attorney (general power by assignees).

the said (*assignees*) as such assignees as aforesaid, do hereby authorise and empower the said (*attorney*) to substitute and appoint one or more attorney or attornies under him for the purposes aforesaid, with such power or powers as to him shall seem meet, and the same, at pleasure, to remove and revoke, and to appoint another or others in the room of such attorney or attornies so removed, and so often as to him the said (*attorney*) shall seem requisite or proper. And generally, for them the said (*assignees*) as such assignees as aforesaid, and in their names, to do, transact, and perform all and every other thing and things, act and acts whatsoever, touching and concerning the premises above mentioned, and other the affairs of the said (*bankrupt*) in North America aforesaid, as fully and effectually, to all intents and purposes whatsoever, as they the said (*assignees*) as such assignees as aforesaid, might or could do if personally present (1); they hereby ratifying, &c. (2). IN WITNESS, &c.

Appoint sub-attorney.

General authority.

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(1) If it be thought fit to provide against the death of the attorney, see *ante*, p. 270.

Death of attorney.

(2) A covenant may be added here for the attorney to account for his receipts, as *ante*, p. 256, n. (1).

Attorney to account.

APPOINTMENTS.

Attorney (receive bond debt).

No. LXXXIII.

A Power of Attorney (1) *to receive money due upon a* Bond.

Variations where it is to receive money secured upon Mortgage.

Recital of bond.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*the principal*) of, &c. send greeting. WHEREAS (2) (*the obligor*) of, &c. by a bond or obligation in writing, under his hand and seal, bearing date the day of , which was in the year , became bound in the penal sum of £ , for the punctual payment to me, my executors, administrators and assigns, of the sum of £ , on the day of , with interest for the same, after the rate of £5 per cent. per annum, by equal half yearly payments on the day of , and the day of (3).

Appointment of attorney.

NOW KNOW YE, that I the said (*principal*) have made, deputed, constituted and appointed, and by these presents do make,

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Money due upon mortgage.

(1) See *ante*, No. LXXVIII. notes.

(2) If the power be to receive money due upon mortgage, such mortgage should be recited,

"WHEREAS by an indenture bearing date the day of , and made or expressed to be made between (*the mortgagor*) of the one part, and me the said (*principal*) of the other part, the said (*mortgagor*) conveyed and assured certain lands and hereditaments, therein particularly described, unto me, my heirs and assigns [*or* unto me, my executors, administrators and assigns, for a term of years, *as the case may be*], subject to a proviso therein contained for making void the same on the repayment of the sum of , together with interest for the same, after the rate of £5 per cent. per annum, on the day of ."

To secure debt.

(3) If to secure a debt owing to the attorney by the principal, recite,

"And whereas I am indebted to (*the attorney*) of, &c., in various sums of money, and in particular in the sum of £ , to me advanced by way of loan on or about the day of last. And whereas I may shortly be indebted to the said (*attorney*) in a

APPOINTMENTS.

Attorney (receive bond debt).

depute, constitute and appoint (1) (*the attorney*) of, &c., my true and lawful attorney, for me and in my name to ask, demand, sue for, recover and receive, of and from the said (*obligor*), his heirs, executors and administrators, the said sum (2) of £ , together with all and every such sum and sums of money as shall from time to time become due and payable, for or in respect of the same (3). AND upon payment thereof, or of any part thereof, good, sufficient, and proper receipts, acquittances, releases and discharges, to make and give for the same. AND upon non-payment of the same, or any part thereof, to take, commence, execute and prosecute, for me and in my name, all such powers, remedies, actions, suits, expedients, ways and means for the recovering, receiving, obtaining, and getting in the said principal sum of £ , and all or any other sum and sums of money which shall or may be then due to me upon or by virtue

To receive and give discharges.

On non-payment to bring actions, &c.

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further sum or further sums which may hereafter be advanced to me by him, every of which sums I am desirous should be repaid with interest as speedily as possible. NOW KNOW YE, that I the said (*principal*), to the end and intent that the said (*attorney*) may be repaid the said sum of £ together with such further or other sums, if any, as may hereinafter be advanced unto me by the said (*attorney*) HAVE," &c., *as above.*

Two attornies.

(1) If two persons be appointed attornies, see *ante*, p. 255, n. (1).

Money due upon mortgage.

(2) If the power be to receive money due upon mortgage, say,

"Of and from the said (*mortgagor*), his heirs, executors or administrators, and all and every other the person or persons to whom it doth, shall, or may belong to pay the same, the said principal sum of £ so due and owing upon the said in part recited security as aforesaid, and all interest and arrears of interest now or hereafter to grow due for the same."

(3) If the power be given to receive interest money, or other annual payments which are directed to be paid to the principal from time to time as due, and not by anticipation, add,

"From and after the same interest, annual sum and proceeds, shall from time to time respectively become due and payable, and not sooner, or otherwise, or in any manner howsoever by way of anticipation, or contrary to the true intent and meaning of the said in part recited will, or the bequest, directions or declarations therein, or thereby made or given, or any condition or restriction therein contained of or concerning the same, but in all and every respect and respects subject and in conformity thereto in all things, to the end and intent that no forfeiture of the said dividends, interest, proceeds

APPOINTMENTS.

Attorney (receive bond debt).

of the said bond (1), as fully and effectually to all intents and purposes whatsoever, as I myself could or might have taken, commenced, executed and prosecuted, if personally present, and these presents had not been made. AND also from time to time to substitute and appoint one or more attorney or attornies under him the said (*attorney*), for all or any of the purposes aforesaid as he shall see occasion or think fit. I the said (*principal*) hereby ratifying, and promising and agreeing, from time to time and at all times hereafter, to ratify and confirm all and whatsoever the said (*attorney*) or his attorney or attornies shall lawfully do or cause to be done in and concerning the premises by virtue of these presents (2). IN WITNESS, &c.

To substitute other attornies.

Confirmation.

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or premises, or any part thereof, may be made or incurred, or any prejudice happen thereto, through or by reason of these presents."

Money due upon mortgage.

If the power be to receive money due upon mortgage, add,

"And also for me and in my name, and as my act and deed, to make, sign, seal, deliver and execute such deeds, conveyances, surrenders, releases and assurances in the law as may be requisite or advisable for the purpose of vesting the several lands, tenements and hereditaments, and mortgaged premises in the said (*mortgagor*), his heirs and assigns, free from all claims and demands to be at any time made by me, or any person or persons rightfully claiming under, or in trust for me, for or in respect of the same."

Money due upon mortgage.

(1) If it be money due upon mortgage, add,

"And also to proceed to judgment, sentence, decree and execution, ejectment or foreclosure therein."

To secure debt.

(2) If the power be given to secure payment of a debt owing to the attorney, add,

"And I do hereby further authorize, empower and direct him, the said (*attorney*), his executors or administrators, upon receipt of the said sum or any part thereof, to retain and apply the same or so much thereof as shall be necessary and sufficient for that purpose, in payment, discharge and satisfaction of the said sum of £ , so now due and owing to him as aforesaid, and also of all and every or any other sum and sums of money, which shall or may at any time or times hereafter be lent or advanced by the said (*attorney*), his executors or administrators, unto me the said (*principal*), or paid to or for my use or occasions, or otherwise due and owing from me, my executors or administrators, to him or them, together with interest, for all and every the said sum and sums, after the rate of £ for every £100 for a year. IN WITNESS, &c."

APPOINTMENTS.

Attorney (receive bond debt).

If provision is wished to be made against the death of the attorney, by reason of the debt being abroad or other cause, see *ante* p. 270.

Death of attorney.

There may also be added a covenant by the attorney to account for monies received, see *ante*, p. 256, n. (1).

Attorney to account.

APPOINTMENTS.

Attorney (receive an annuity).

No. LXXXIV.

An Appointment of an Attorney (1) *to receive an* Annuity *charged upon Freehold or Leasehold Premises.*

Variations where it is secured upon money in the Funds. (2)

Recital of grant of annuity.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*the principal*) of, &c. send greeting. WHEREAS (3) by an indenture bearing date the day of , and made or expressed to be made between (*the grantor of the annuity*) of, &c. of the first part, me the said (*principal*), of the second part, and (*the trustee*) of, &c. of the third part, the said (*grantor*) in consideration of the sum of , granted an annuity or yearly sum of unto me, my executors, administrators, and assigns, for the term of his natural life [*or as the case may be*] payable quarterly on the day of , the day of , the day of , and the day of in every year, and charged (4) the same upon certain lands, tenements, and hereditaments, in the said indenture more particularly described, in the manner therein mentioned, with powers of distress and entry upon and perception of the rents and

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(1) See ante, No. LXXVIII. p. 254, notes.

Dividends.

(2) Where a power of attorney is requisite for the receipt of dividends themselves out of money in the funds, it is always made out by the governor and company of the Bank, who will not attend to any other than their own form.

Annuity left by will.

(3) If the annuity was left by will, see the variations subjoined to the next Precedent, No. LXXXV.

Annuity secured by money in the Funds.

(4) If the annuity be secured upon a life interest in money in the funds, say,

"And charged the same upon the dividends, interest, and annual proceeds of the sum of £ three per cent. Consolidated Bank Annuities in the same indenture more particularly described, in the manner therein expressed, and which said annuity was also further secured by an assignment of the said dividends, and interest unto the said (*trustee*), and by the bond, &c." *as above.*

profits of the same premises, for better securing the payment of the same annuity, at the times and in the manner therein expressed; and which said annuity was also further secured by a demise of the said premises unto the said (*trustee*), for the term of years, upon certain trusts therein expressed, and also by the bond (1) or obligation in writing of the said (*grantor*), in the penal sum of £ bearing even date with the said indenture, and also by a warrant of attorney to confess judgment thereupon. AND WHEREAS it is inconvenient for me personally to receive the said annuity so granted to me as hereinbefore is mentioned. Now THEREFORE KNOW YE, that I the said (*principal*) HAVE made, deputed, constituted, and appointed, and by these presents Do make, depute, constitute, and appoint (*the attorney*) of, &c. my true and lawful attorney for me and in my name to ask, demand, sue for, recover, and receive of and from the said (*grantor*), his heirs, executors, and administrators, and all and every other the person or persons to whom it doth, shall, or may belong to pay the same, the said annuity, or yearly sum of £ , together with all and every such other sum and sums of money as shall or may at any time, and from time to time, become due and payable upon or by virtue of the covenants contained in the said hereinbefore in part recited indenture, or the said bond, warrant of attorney, or judgment, or otherwise howsoever. AND upon payment thereof, or of any part thereof, good and sufficient and proper receipts, acquittances, and discharges, to make and give for the same; AND upon non-payment of the same, or any part thereof when due, and in arrear, for me and in my name, or otherwise to enter (2) into and upon the said hereditaments and premises so charged therewith as aforesaid, and every or any part thereof, and distrain, or receive and take the rents, issues, and profits of the said hereditaments and premises for the same, or to sue or issue out execution upon the said judgment, or to use, take, commence, and prosecute all and every or any such powers, remedies, actions, suits, expedients, ways, and means for the

Appoint of attorney.

To receive annuity.

To give discharges.

Upon non-payment to enter, &c.

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(1) If the annuity was secured by a warrant of attorney only, and no bond were given, say,

Annuity secured by warrant of attorney only.

"By a warrant of attorney under the hand and seal of the said (*grantor*), authorizing certain persons therein named to confess judgment against him in the Court of , at Westminster, in an action of debt, for the sum of , and costs of suit."

(2) If the annuity be secured upon money in the funds, this power of distress and entry is to be omitted.

Secured upon money in the Funds.

APPOINTMENTS.

Attorney (receive an annuity).

recovering, attaining, and procuring payment of the same annuity or yearly sum of £ , and all arrears thereof, and such other sum and sums of money as aforesaid, as fully and effectually to all intents and purposes as I myself could or might have used, taken, commenced, or prosecuted, if personally present, and these presents had not been made. AND also from time to time to substitute and appoint one or more attorney or attornies under him the said (*attorney*), for all or any of the purposes aforesaid, as he shall see occasion or think fit. I the said (*principal*) hereby ratifying, and promising and agreeing to ratify and confirm all and whatsoever the said (*attorney*), or his attorney or attornies shall lawfully do, or cause to be done in and concerning the premises, by virtue of these presents (1). IN WITNESS, &c.

To substitute other attornies.

Confirmation.

Death of attorney.

Attorney to account.

(1) If provision is wished to be made against the death of the attorney, see *ante*, No. LXXXI. p. 270.

Here may be added a covenant by the attorney to account for the sums received, as *ante*, p. 256, n. (1).

No. LXXXV.

An Appointment of an Attorney (1) *to receive a* Legacy.

Variations where it is Residuary property.—Where a distributive share of an Intestate's effects.—Where an Annuity left by will.—Where the legacy is payable abroad (2).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*the principal*) of, &c. send greeting. WHEREAS (*the testator*) of, &c. in and by his last will (3) and testament, bearing date the day Recital of legacy.

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(1) See ante, No. LXXVIII. p. 254. notes.

(2) * If the legacy be payable to a person abroad, a power in the above form is usually given to some person in England to receive and give a discharge for it, but this is not the most eligible mode, for the person granting the power may revoke it (every power being in its nature revokable at pleasure) or may be dead at the time the discharge for the legacy is executed, in which case the power would be determined, and the discharge void. The proper method, therefore, where the legatee is abroad, is for him to assign the legacy to some person in England, to the intent that he may be qualified and enabled to receive the legacy, and to make and execute a sufficient release and discharge for it. In this case, although the legatee should die before the legacy is paid and the release given, still the whole interest and property of the legacy being vested in the assignee, he would be capable of receiving and releasing it. Legacy abroad.

(3) If the power be to receive the distributive share of an intestate's effects, say, Distributive share.

"WHEREAS (*the intestate*), late of, &c. deceased, departed this life on or about the day of intestate. AND WHEREAS letters of administration of the estate and effects of the said (*intestate*) were granted unto (*the administrators*) of, &c. on or about the day of , by the Court of . AND WHEREAS I am the , and one of the next of kin of the said (*intestate*), and as such entitled to a distributive share or proportion of his estate and effects."

APPOINTMENTS.

Attorney (receive legacy).

Appointment of attorney to receive same.

of , gave and bequeathed to me (1) the sum of £ (2), to be paid within the space of months after his decease, and appointed (*the executors*) of, &c. executors of his said will. Now KNOW YE, that I the said (*principal*) HAVE made, deputed, constituted and appointed, and by these presents do make, ordain, constitute and appoint (*the attorney*) of, &c. my true and lawful attorney, for me, and in my name, to ask, demand, sue for, recover, and receive, of and from the said (*executors*) (3), or other the person or persons to whom it doth, shall or may belong to pay the same, the said legacy (4) or sum of £ (5), so given and bequeathed to

c

Residuary property.

(1) If the principal be entitled to the residue of the testator's property, say,

"The rest, residue and remainder of his personal estate and effects, after payment and satisfaction of all debts, legacies and other payments in and by the said will directed to be made."

Annuity.

(2) If the power be to receive an annuity left by will, say,

"An annuity or yearly sum of £ , for and during the term of my natural life to be paid half yearly, and the first payment thereof to begin and be made within six months from the time of his decease."

Share of intestate's effects.

(3) If the power be to receive the distributive share of an intestate's effects, say,

"Of and from the said (*administrator*), the administrator of the goods and chattels, rights and credits of the said (*intestate*) deceased, or other the person or persons to whom it doth, shall or may belong to pay or distribute the same, all such distributive share or proportion of the personal estate and effects of the said (*intestate*) deceased, as I am or shall or may be entitled to under or by virtue of the statute made for the distribution of the estates of persons dying intestate, or otherwise howsoever, as the brother [*or as the case may be*] of the said (*intestate*); and also all other sum and sums of money, goods, chattels, and personal estate whatsoever, which on the decease of the said (*intestate*) came or belonged, or of right ought to have come or belonged to me."

Residuary property.

(4) If the power be to receive residuary property, say,

"The residue and remainder of the personal estate and effects of the said (*testator*), after payment and satisfaction of all debts, legacies and other payments in and by the said will directed to be made; and other the legacies, sums, gifts and bequests given and bequeathed to me, &c." *as above.*

Annuity.

(5) If it be an annuity, say,

"The said annuity or yearly sum of £ so given and be-

APPOINTMENTS.

Attorney (receive legacy).

me by the said last will and testament of the said (*testator*) deceased, as aforesaid, together with any interest which may be due for the same; AND upon payment of the same, a good, sufficient, and proper release, acquittance, or other discharge for the same, for me, and in my name, to make and give; and also for me, and in my name, and as my act and deed, to sign, seal, deliver, and execute, if thereunto required (1), a bond or obligation, or other security, for the repayment of the said legacy, or of a due proportion thereof, in case the estate and effects of the said (*testator*) shall prove insufficient to discharge the debts and other lawful and prior demands which may be thereafter made thereupon (2). AND upon non-payment (3) of the said legacy, or sum of £ , or any part thereof, or of any interest due in respect thereof, to use, take, commence, and prosecute for me, and in my name, all powers, remedies, actions, suits, expedients, ways and means, for the recovering, receiving, and obtaining payment of the same, as fully and effectually to all intents and purposes whatsoever, as I myself could or might have used, taken, commenced, or prosecuted, if personally present, and these presents had not been made. AND also from time to time, and at all times, to nominate, substitute, and appoint, any attorney or attornies under him the said (*attorney*) for all or any of the purposes aforesaid. I the said (*principal*) hereby ratifying, and promising, and agreeing, at all times, and from time to time, to ratify and confirm all and whatsoever my said attorney or his said attorney or attornies shall lawfully do, or cause to be done in the premises, by virtue of these presents (4). IN WITNESS, &c.

And give discharges.

To execute bond for re-payment if assets deficient.

On non-payment, to bring actions, &c.

To substitute other attornies.

Confirmation.

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queathed to me by the last will and testament of the said (*testator*) deceased, as aforesaid, and upon payment, &c." *as above.*

(1) In the case of an annuity, the above clause may be omitted. Annuity.

(2) If an executor or administrator pay a legacy whilst any debt remains unpaid, and the assets be insufficient for payment of debts, he will be personally answerable to the creditors; hence a bond of this kind is generally required where any doubt subsists of their being any outstanding claims.

(3) If the power be to receive an annuity, say, Annuity.

"And upon non-payment of the said annuity or yearly sum of £ , or of any half yearly payment thereof, to use, take, &c." *as above.*

(4) If it be wished to guard against the death of the attorney, see *ante*, p. 270. Death of attorney.

A covenant may here be added for the attorney to account for the sum received, as *ante*, p. 256. n. (1). Attorney to account.

APPOINTMENTS.

Attorney (receive rent).

No. LXXXVI.

An Appointment of an Attorney (1) *to receive* Rent.

Variations where the rent, or the premises, or both of them, have been previously assigned.

Recital of lease.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*the principal*), of, &c. send greeting. WHEREAS by an indenture of demise or lease, bearing date the day of , and made or expressed to be made between me the said (*principal*) of the one part, and (*the lessee*) of, &c. of the other part, I the said (*principal*) demised and leased unto the said (*lessee*), his executors, administrators and assigns, a messuage or tenement, piece or parcel of land and premises, situated at , in the county of , in the said indenture of lease more particularly described, To hold the same unto the said (*lessee*), his executors, administrators and assigns, from the day of then last past, for the term of years, at the yearly rent of £ , payable half yearly on the day of , and day of in every year (2).

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(1) See *ante*, No. LXXVIII. p. 254. notes.

Recital of assignment of rent.

(2) If the rent were assigned by the original lessor to the principal, say, "AND WHEREAS by an indenture of assignment, bearing date the day of , and made, or expressed to be made between (*the lessor*) of the one part, and me the said (*principal*) of the other part, the said (*lessor*) for the considerations therein mentioned, assigned over unto me the said (*principal*), my executors, administrators, and assigns, ALL that the yearly rent or annual sum of £ , so reserved and made payable in and by the said hereinbefore in part recited indenture of lease, and also all and singular the messuages or tenements, pieces or parcels of ground and premises comprised in the said indenture, for the residue then to come of the

APPOINTMENTS.

Attorney (receive rent).

Now KNOW YE, that I the said *(principal)* HAVE made, deputed, constituted, and appointed, and by these presents Do make, depute, constitute, and appoint the said (*attorney*) my true and lawful attorney for me and in my name, and for my own use and benefit, to ask, demand, sue for, recover and receive of and from the said (*lessee*), his executors, administrators, under-tenants, and assigns, or other the tenant or occupier, or tenants or occupiers for the time being of the said messuage or tenement, or piece or parcel of ground and premises, or any part thereof, and of and from whomsoever else it doth, shall, and may belong to pay the same, the said yearly rent or sum of £ , and also all such sum and sums of money as now are or hereafter shall or may at any time or times during the subsistence of these presents grow or become due or payable from and out of, or in respect of the said messuage or tenement, piece or parcel of ground and premises comprised in and expressed to be demised by the said hereinbefore in part recited indenture of lease; and upon receipt thereof, or of any part thereof, for me and in my name, good and sufficient receipts, discharges, and acquittances, from time to time to make and give for the same; and also to pay, settle, and adjust all accounts, claims, and demands for ground-rent, land-tax, and repairs of the same, and other lawful deductions to deduct and allow. AND upon non-payment of the said yearly rent, sum or sums of money, or any part thereof, for me and in my name,

Appointment of attorney to receive rent

and give discharges.

To allow just claims.

On non-payment to enter and distrain.

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said term of years, together with the said indenture of lease, and all benefit thereof, and all powers, authorities, and remedies which are therein or thereby reserved to or otherwise vested in him the said (*lessor*) for securing, recovering, or enforcing payment of the said yearly rent, or annual sum of £ ; he the said (*lessor*) thereby authorizing and empowering me the said *(principal)*, my executors, administrators and assigns, to use therein his name, or the name or names of his executors or administrators, as might be deemed expedient for recovering or securing the same."

If the premises have been assigned by the lessee, say,

" AND WHEREAS by divers mesne assignments, and other acts in the law, the said messuage or tenement and premises in the said indenture of lease described, are now vested in, or are now in the tenure or occupation of (*the tenant of the premises*) subject to the said indenture, and to the rent, covenants and agreements thereby reserved and contained, on the tenant, lessee, or assignee's part, to be paid, performed and observed respectively."

Recital of premises assigned.

APPOINTMENTS.

Attorney (receive rent).

to enter into and upon the said premises, or any part thereof, and to seize and distrain all or any goods, chattels, or effects which shall then and there be found, or which shall have been thence unlawfully removed, and every or any such distress or distresses, to take, carry away, distrain, and keep until the said rent, and all arrears thereof, and all costs attendant upon such distress, shall be fully paid and satisfied; and, in default or non-payment thereof for the space of days next after such distress shall be made, to sell and dispose of or otherwise deal with the same according to law; or at the discretion of the said (*attorney*) to commence or prosecute any action, suit, bill, plaint, avowry, or information, or to take or employ any such other lawful powers, remedies, expedients, ways and means for the recovering and attaining payment of the same, as fully and effectually to all intents and purposes whatsoever, as I myself might or could have commenced, prosecuted, taken and employed, if personally present, and these presents had not been made. AND also from time to time to substitute and appoint one or more attorney or attornies under him the said (*attorney*) for all or any of the purposes aforesaid, and again at his pleasure to displace and remove as he shall see occasion or think fit. I the said (*principal*) hereby giving and granting unto the said (*attorney*) full and sufficient power and authority in or concerning the premises, for all and every or any of the purposes aforesaid, and promising and agreeing to ratify, allow, and confirm all and whatsoever the said (*attorney*) or his attorney or attornies shall lawfully do or cause to be done in and concerning the premises by virtue of these presents (1). IN WITNESS, &c.

Or bring actions, &c.

Power to substitute other attornies.

Death of attorney.

(1) If it be wished to guard against the death of the attorney, see *post*. p. 270.

Attorney to account.

Here may be added a covenant by the attorney to account, as *ante*, p. 256. n. (1).

No. LXXXVII.

An Appointment of an Attorney to receive seisin (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the feoffee*) of, &c. sends greeting. WHEREAS, by an indenture of feoffment, bearing or intended to bear even date with these presents, and made or expressed to be made between (*the feoffor*) of, &c., of the one part, and the said (*feoffee*) of the other part, a capital messuage or dwelling house, with the lands, tenements, hereditaments and appurtenances thereunto belonging, situated at , in the county of , in the said indenture more particularly described, were granted and enfeoffed unto and to the use of the said (*feoffee*), his heirs and assigns, for ever. NOW KNOW YE that the said (*feoffee*) HATH nominated, constituted, and appointed, and by these presents DOTH nominate, constitute, and appoint, (*the attorney*) of, &c. his true and lawful attorney, for him, and in his name and stead, to receive and take of and from the said (*feoffor*), or his heir, or his or their certain attorney or attornies, lawfully authorized to deliver the same, full and sufficient seisin and possession of all and singular the messuages, lands, tenements, and hereditaments in the said indenture of feoffments described, and thereby granted and enfeoffed or otherwise assured or mentioned, or intended so to be, with the appurtenances, or of any part or parcel thereof, in the name of the whole, to and for the use and behalf of the said (*feoffee*), his heirs and assigns, according to the purport and effect and true intent and meaning of the same indenture. IN WITNESS, &c.

Recital of feoffment.

Appointment of attorney to receive seisin.

(1) See *ante*, MOD. PREC. 3d Edit. Vol. I. No. XVII. p. 226. n. (1). But a purchaser or other grantee is not bound to accept of a conveyance or livery by the attorney of the grantor; see *ibid.* and Noel v. Wiston, 6 Mod. Rep. 50.

APPOINTMENTS.

Attorney (receive insurance money).

No. LXXXVIII.

An Appointment of an Attorney to receive Insurance Money from an Underwriter.

KNOW ALL MEN BY THESE PRESENTS, that I (*principal*), of, &c. send, greeting. WHEREAS I, the said (*principal*) on or about the day of shipped or caused to be shipped in and upon a certain ship or vessel called the whereof (*master*) is master, the goods and merchandizes mentioned in the schedule hereunder written, which said goods and merchandizes were shipped on board the said vessel at , and destined for the port of in and for which said voyage the said ship or vessel sailed on or about the day of now last past: AND whereas I the said (*principal*) caused sundry policies of insurance to be underwritten by certain underwriters, for assuring the said goods and merchandizes from loss and damage by sea, as by the said policies of assurances, dated respectively the day of , &c. reference being (thereunto had), will and may more fully and at large appear: AND whereas the said ship or vessel was, by stress of weather, forced into and her said cargo totally damaged and spoiled, and I the said (*principal*) have thereby sustained a loss to the full amount of the sum assured in and by the said several policies of assurance. Now I the said (*principal*) HAVE made, ordained, nominated, constituted and appointed, and by these presents Do make, ordain, nominate, constitute, and appoint (*attorney*), of, &c. my true and lawful attorney, for me and in my name, and for my use, to ask for, demand, and receive of and from the several underwriters and insurers signing and subscribing the said or any other policies of insurance for insuring the said goods and merchandizes shipped by me the said (*principal*) on board the said ship or vessel called the , or of and from their several and respective executors, or administrators, or whomsoever else it doth, shall, or may concern, or belong to pay the same, the sum or several sums of money which I the said (*principal*) may be entitled to recover of and from the said underwriters or insurers, by virtue of

Recitals of policies, &c.

Appointment of attorney to receive sums due.

APPOINTMENT,
Attorney (receive insurance money).

the said policies of insurance or any or either of them, and all such costs and charges which I or my said attorney may have been or shall be put to touching the premises; and in default of payment of the same, or any part thereof, for me the said (*principal*) and in my name to commence and prosecute with effect, any action or actions, suit or suits, either at law or in equity, against the said insurers and underwriters, any or either of them, their or his executors, or administrators, or whomsoever else it doth, shall, or may concern, or belong to pay the same, for the recovery and enforcing the payment thereof, or any part thereof; and on payment of the said several sums so insured, or any part thereof, for me the said (*principal*), and in my name to give, sign, seal, and execute proper receipts, or other good and sufficient discharges for the same; and also for me the said (*principal*), (if he the said (*attorney*) shall see fit) to compromise, conclude, and agree, either by arbitration or otherwise, the several and respective claims and demands which I the said (*principal*) have against the said insurers and underwriters, any or either of them, by virtue of any such policies of insurance; and generally for me the said (*principal*), and in my name to do, transact, and perform all and every other thing and things, act and acts whatsoever, touching and concerning the said policies of insurance, any or either of them, as fully and effectually to all intents and purposes whatsoever as I the said (*principal*) might or could do if personally present. And also, &c. [*power to appoint another attorney*] (1). I hereby ratifying, &c. (2). IN WITNESS, &c.

And give receipts, &c.

SCHEDULE
ABOVE REFERRED TO.

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(1) See *ante*, p. 256.
(2) See *ibid.*

A covenant may be added here for the attorney to account for his receipts, as *ante*, p. 256. n. (1).

Attorney to account.

APPOINTMENTS.

Attorney (receive freight).

No. LXXXIX.

**An Appointment of an Attorney to receive the* Freight *of a Ship.*

KNOW ALL MEN BY THESE PRESENTS, that I, (*master*) of, &c. master of the ship or vessel called the , of the burthen of tons or thereabouts, have made, constituted and appointed, and by these presents Do make, constitute and appoint (*attorney*) of, &c. part owner of the said ship, [*or as the case may be*], to be my true and lawful attorney, for me, and in my name, and for my use, and the use of the rest of the part owners of the said ship, to demand, levy, and receive, by all lawful ways and means, of and from G. and H. of merchants, their executors and administrators, and any and every of them, and all others whom it doth or shall concern, to pay the same and every sum or sums of money which now is or are due, owing and payable by and from them, or either of them, as freight or otherwise, for or in respect of any goods or merchandizes imported in the said ship in her late voyage from , by virtue of a charterparty dated, &c. or otherwise howsoever; and upon receipt of all or any such sum or sums of money, to give sufficient receipts and discharges for the same. I hereby giving unto him, my said attorney, full power and authority in or concerning the premises, in all things as I now have or then should have had if these presents had not been made (1).

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(1) The above is the usual form, but the like additions may be made as in the preceding forms, which see in the margins.

No. XC.

An Appointment of an Attorney from the Directors of an Insurance Company to sign Policies *of Insurance, &c. agreed for.*

KNOW ALL MEN BY THESE PRESENTS, that we (*directors*), three of the directors of the Assurance Company, London, being duly authorized for that purpose on the behalf of the said Company, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint (*attornies*) of , to be our true and lawful attornies in or for and within the county of , giving and hereby granting them full power and lawful authority for us and in our names and on our behalf, and in the name and behalf of and for the said Assurance Company, to underwrite and sign such policies of insurance against loss or damage by fire, as they the said (*attornies*) may judge for our interest and the interest of the said company, (each policy not exceeding the sum of £), on houses, furniture, warehouses, churches, chapels, and goods in warehouses within the said county; and also to insure against fire, ships building or repairing or laid up in harbour in any river, dock, or port in or adjoining to the same county, or any part thereof; and for us, the said (*directors*) to regulate, adjust, settle, and pay all damages which may happen by fire to any such houses, furniture, warehouses, churches, chapels, goods in warehouses, ships, or other property by them so insured; and likewise to compound and agree by arbitration or otherwise concerning the same, as they the said (*attornies*) shall judge expedient or advisable; and also to appear before all or any lords, judges, and justices in any court or courts, office or offices at aforesaid, or in any other place or places, there for us to do, say, and act as occasion shall be or require; and generally for us the said (*directors*), and in our names and on our behalf, and for and in the name and on the behalf of the said Company, to do, transact, perform and conclude all and every other thing and things,

APPOINTMENTS.
Attorney (execute fire policies).

act and acts whatsoever, touching and concerning the premises above mentioned, as fully and effectually to all intents and purposes whatsoever as we the said (*directors*) might or could do if personally present, hereby promising and agreeing to ratify and confirm and hold for good and valid all and whatsoever they the said (*attornies*) shall legally and lawfully do or cause to be done in and about the premises by virtue of these presents. IN WITNESS, &c.

No. XCI.

An Appointment of an Attorney to surrender *Copyhold Premises.*

KNOW ALL MEN BY THESE PRESENTS, that I (*the principal*) of, &c. one of the copyhold or customary tenants of the manor of , in the county of , HAVE made (1), ordained, deputed, constituted, and appointed, and by these presents Do make, ordain, depute, constitute, and appoint (*the attorney*) (2) of, &c. my true and lawful attorney, for me the said (*principal*), and in my name, place, and stead, to surrender into the hands of the lord or lords, or lady or

Appointment of attorney.

To surrender premises.

(1) It is not necessary that the surrender of copyhold premises should be made by the copyholder in person; he may, in many cases, appoint an attorney for that purpose, and a surrender made by such attorney will be equally operative as if made by the copyholder himself. A purchaser, however, is not compellable (unless under peculiar circumstances, rendering a personal surrender impossible) to accept of a surrender made by an attorney; Mitchell v. Neale, 2 Ves. 679; for the power may be revoked the next moment, in which case the surrender, being founded upon it, would be void, and the purchaser driven into a Court of Equity for relief.

Copyholds may be surrendered by attorney.

If, however, the copyholder be a person non compos, or an infant, he is prohibited by the common law from making an attorney; and the statute 9 Geo. I. c. 29. which enables feme coverts and infants to make attornies for the purposes of admission, has no relation to surrenders; and although a husband may, in most cases, appoint an attorney for himself and his wife, yet that cannot be done in the present instance, it being necessary that the wife should on her surrender be examined privately by the steward to ascertain that there was no coercion by her husband, and which would be frustrated by his appointment of an attorney, for a person it is clear cannot be examined by deputy; and see 1 Watk. Copyh. 66; and so it also is of executors, or other persons appointed to sell copyhold lands, who cannot surrender by attorney, for they are themselves no more than attornies, or persons authorised to do the thing directed, Co. Copyh. s. 34. 9 Co. 75. b.

Feme coverts, or infants, may however, be attornies to *make* the surrender, because they act merely as instruments, and ministerially, without the necessary exercise of any judgment or discretion; Co. Lit. 52. a.

(2) If two persons be appointed attornies, see *ante*, p. 255. n. (1).

Two attornies.

APPOINTMENTS.
Attorney (vote for assignees.
Confirmation.

all and whatsoever shall be needful and requisite to be done in and about or concerning the premises, as fully and amply to all intents and purposes as I might or could do were I personally present; I the said (*principal*) hereby ratifying, confirming, and allowing, and agreeing to ratify, confirm, and allow all and whatsoever my said attorney shall lawfully do or cause to be done by virtue of these presents. IN WITNESS (1), &c.

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as my attorney, and for me and in my name to accept the said trust, and to execute a counterpart of the assignment to the commissioners."

Power to receive dividends, and sign certificate.

If the letter of attorney be to receive dividends, and to sign the certificate of the bankrupt, say,

" For me and in my name, place, and stead, and to and for my sole and proper use and benefit, to ask, demand, sue for, recover, and receive of and from the assignee or assignees of the said bankrupt's estate and effects, my part and share of and in all such dividend or dividends, as the said commissioners, or the major part of them shall from time to time, and at all or any time or times hereafter, order to be made among the creditors of the said (*bankrupt*), who shall have come in and sought relief under the said commission, and which shall be due, owing, and payable to them, for or on account of the debts proved by them under the said commission; and on receipt thereof, for me, and in my name, and as my act and deed to sign, seal, deliver and execute all and every such, and sufficient receipts, acquittance, releases and discharges to the said assignee or assignees as shall be lawful and fit to be done; and also for me and in my name, and as my act and deed, to sign the said bankrupt's certificate, and my consent to the allowance thereof."

One partner may sign.

(1) If the creditors giving the power be partners, it is sufficient if one of them only sign the letter of attorney, for in matters of bankruptcy one partner is allowed (contrary to the general rule that one partner cannot bind another by deed; Harrison v. Jackson, 7 Durnf. and E. 207.) to execute powers of attorney for the choice of assignees, signing the certificate, &c. and which will be binding upon his co-partners. See Exparte Mitchell, 14 Ves. 597.

Must be accompanied by affidavit of execution.

*** It will be necessary that the above letter of attorney should be accompanied by an affidavit of its having been duly executed; this may be made before a Master in Chancery, either ordinary or extraordinary, or before the commissioners *vivâ voce*. The 5 Geo. II. cap. 20. s. 26, enacting that the commissioners shall admit the proof of any creditor's debt that shall live remote from the place of meeting, by affidavit, or solemn affirmation if the creditor be a quaker, and also permit any per-

Attorney (vote for assignees).

son duly authorized by letter of attorney from such creditors (oath or affirmation of the due execution thereof being made before a master in Chancery, ordinary or extraordinary, or before the commissioners *vivâ voce*, or if the creditors reside abroad, before a magistrate of the place where the party shall be residing, and together with the creditor's letter of attorney, to be attested by a notary public) to vote in the choice of an assignee or assignees of such bankrupt's estate and effects, in the place and stead of such creditor. The form of such affidavit may be as follows:

Affidavit of execution of letter of attorney.

" (*The deponent*), of, &c. maketh oath and saith that he was present, and did see *(the creditor)*, of, &c. duly sign and seal, and as his act and deed deliver the letter of attorney hereunto annexed, and that the name of subscribed against the seal of the said letter of attorney is the proper hand-writing of the said (*creditor*), and that the names of this deponent, and of subscribed to the said letter of attorney, as witnesses to the execution thereof, are the own proper respective hand-writing of this deponent and of the said ".

Sworn, &c. before me,

A. B. Master in Chancery Extraordinary.

APPOINTMENTS.
Sub-attorney.

No. XCIII.

An Appointment of an Attorney *in pursuance of a Power delegated to him by his principal for that purpose.*

Recital of letter of attorney;

and power to substitute another.

Appointment of sub-attorney.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*the original attorney*) of, &c. send greeting. WHEREAS (*the principal*) of, &c. by a certain deed poll, or instrument in writing, under his hand and seal, bearing date the day of , constituted and appointed me his true and lawful attorney, for the purpose of collecting and getting in the several debts and sums of money owing to him the said (*principal*), [*or as the case may be*,] and thereby authorised and empowered me from time to time to substitute, nominate, and appoint one or more attorney or attornies, under me, for all or any of the purposes in the said deed-poll mentioned. NOW KNOW YE, that I the said (*attorney*), pursuant to and in exercise of the power and authority so given to me as hereinbefore is mentioned, HAVE nominated, substituted, and appointed, and by these presents Do nominate, substitute, and appoint (*the sub-attorney*) of, &c. in my place and stead, to act as and be the attorney of him the said (*principal*), and in his name or otherwise, to ask, demand, sue for, recover and receive all and every the debt and debts, sum and sums of money due and owing unto him the said (*principal*), and which have not been by me received and recovered, and which said debts, and sums of money are, or are intended to be set forth in the schedule hereunder written, and upon receipt or recovery thereof, receipts, releases, and other proper and sufficient discharges and acquittances to give for the same, I the said (*original attorney*) hereby giving and granting unto the said (*sub-attorney*) my whole power and authority, as attorney of the said (*principal*), to take, commence, use, exercise, and prosecute all lawful actions, remedies, suits, expedients, and means, which may be necessary or expedient in or concerning the premises as

fully and effectually to all intents and purposes as I the said (*original attorney*) could or might do under or by virtue of the hereinbefore in part recited power or authority given to me for the purposes aforesaid, or any of them. IN WITNESS, &c.

APPOINTMENT.

Sub-attorney.

SCHEDULE
ABOVE REFERRED TO.

APPOINTMENTS.

Deputy (Steward).

No. XCIV.

An Appointment of a Deputy Steward *of a Manor for executing the general office of Steward* (1).

KNOW ALL MEN BY THESE PRESENTS, that I (*steward*), of, &c., steward (2) lawfully appointed of the manor of in the county of , with authority and power to act therein by deputy to be by me appointed, HAVE constituted and appointed, AND BY THESE PRESENTS, Do constitute and appoint (*deputy*), of, &c., my deputy or under steward of the said manor during my pleasure, to perform and execute the said office in my stead and place, in all things as effectually as I could do myself if I were personally present and performed and executed the same. AND to have and receive for performing and executing the said office, out of the fees, rewards, and profits thereof, the yearly sum or after the rate of the yearly sum of £ , in case the same shall amount thereunto; and to account for and pay over on demand (3) all and every the remainder, if any, of the amount of the same fees, rewards or profits. IN WITNESS, &c.

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(1) As to what offices may be executed by deputy, see 1 Elem. Convey. p. 283, (2d edit).

Steward. (2) See the appointment of a *steward* of a manor, *post.* APPOINTMENT, *steward.* (No. CVI. p. 349).

Bond. (3) As this appointment will be in the hands of the appointee, it should be accompanied by a bond from him duly to account and pay over balances, &c.; the form of which will be found *post.* "BOND".

No. XCV.

**An Appointment of a* Deputy Steward *of a Manor to take a* Surrender *of, or* Admission *to Copyholds.*

KNOW ALL MEN BY THESE PRESENTS, that I, (*steward*), of, &c., steward of the manor of in the county of , have nominated, appointed, and deputed, AND by these presents do nominate, appoint, and depute (*deputy*), of, &c., my deputy steward of the said manor, for the purpose following and for such purpose only, (that is to say) to take the surrender of customary tenant of the said manor (1); [and his wife (*if so*) he having first privately and secretly examined the said (*wife*) in respect to her free consent thereto, which examination I hereby authorise the said (*deputy*) to take] as to ALL that customary messuage, &c., [*describe the premises to be surrendered*], and the reversions and remainders thereof, and all the estate, right, title, and interest of him the said (*surrenderer*) therein, to the use and behoof of such person or persons to whom as he the said (*surrenderer*) shall think fit to surrender the same, his and their heirs and assigns, either absolutely or conditionally, in such manner as shall be concluded and agreed upon by and between the said (*surrenderer*) [and *wife*] and the person or persons to whose use such surrender shall be made: I, the said (*steward*), by these presents giving and granting unto my said deputy my full and sole power in the premises, and ratifying and confirming all and whatsoever he, my said deputy, shall legally do in the premises by virtue hereof or otherwise. IN WITNESS, &c.

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(1) If the power be to admit to copyholds, say, Admission.

To admit A. B. of, &c. unto all, &c. and also to take and accept the surrender of him the said (A. B.) as to all and singular the same premises, and the reversion, &c. *as above.*

APPOINTMENTS.

Deputy (Visitor).

No. XCVI.

**An Appointment of a* Deputy Visitor *of the Poor, pursuant to* 22 *Geo.* 3. *c.* 83 (1).

I, A. B., visitor of the poor and poor-house for the parish, [*or* township, &c.] of [*or* for the united parishes, townships, &c. of and], in the county of , do hereby nominate and appoint C. D., to be my deputy visitor and assistant during my will and pleasure, pursuant to the power given to me by an Act passed in the twenty-second year of the reign of his Majesty King George the Third, intituled, "An Act for the better relief and employment of the Poor," [*or as the case may be*] and do authorise him to discharge the duty required of him by the said Act.

Witness my hand this day of

(*Visitor*).

(1) By the above Act, sect. 10. every visitor of the poor appointed under that Act, if not a guardian, is authorised to nominate, in the above form, a discreet or proper person to be his deputy or assistant.

No. XCVII.

An Appointment of an Executor *in the room of a Co-executor deceased, pursuant to the directions of a will* (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, (*surviving executor*) of, &c. (being the surviving executor named and appointed in or by the last will and testament of (*testator*) late of deceased), send greeting. WHEREAS the said (*testator*), in and by his last will and testament in writing, bearing date on or about the day of in the year , nominated and appointed me the said (*surviving executor*), and (*deceased executor*), of, &c. joint executors of his said will; and whereas the said (*testator*), in and by his said will, declared, and directed, that in case of the decease of either of his said executors before the trusts and directions therein contained, &c. [*insert verbatim the power given to the survivor of the executors to appoint another in his stead*]. And whereas the said (*testator*) departed this life soon after making his said will, and upon his decease we the said (*surviving and deceased executors*) duly proved his said will in the Prerogative Court of the Archbishop of Canterbury, and took upon ourselves the burthen of the execution thereof. AND WHEREAS the said (*deceased executor*) departed this life on or about the day of , and whereas many of the trusts and directions of the said will of the said testator still remain unperformed. NOW THEREFORE KNOW YE, that I the said (*surviving executor*), in pursuance and by virtue of the power, authority, and directions to me given, in and by the said in part recited will of the said

Recitals.

Appointment.

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(1) Where the powers or directions given to several executors are of a discretionary or a fiduciary nature, which the testator does not think fit to entrust to one person or more alone, he may empower the surviving executor or executors to appoint another or others in the room of such as may die before the performance of the trusts reposed in them; but this they will not be able to do without being so expressly authorised.

Authority to appoint.

APPOINTMENTS.
Executor.

(*testator*) deceased, HAVE nominated, constituted and appointed, and by these presents, under my hand and seal, as attested by the two persons whose names are, or are intended to be hereupon indorsed in witness thereof, Do nominate, constitute and appoint (*new executor*) of, &c. to be an executor of the said in part recited will of the said (*testator*) deceased, in the room, stead and place of the said (*deceased executor*) deceased, to act in and execute the same, and the trusts and directions thereof, so far as the same or any of them may still remain unperformed, in conjunction with me the said (*surviving executor*), in all matters and things whatsoever, in like manner as if he the said (*deceased executor*) had been nominated and appointed co-executor with me in or by the said will. AND I do hereby accordingly, in further pursuance of the power and authority in me vested as aforesaid, give and delegate unto him the said (*new executor*), as far as I lawfully can or may, all and every the necessary, sufficient, and legal powers and authorities requisite for the said purposes, and every or any of them, and all benefits, privileges, and advantages incident thereunto (1). IN WITNESS, &c.

Executors. Trustees.

(1) If any part of the effects of the testator be expressly given to the executors for particular purposes, they will with respect to such property be trustees, and there must be added an assignment to the newly appointed executor jointly with the survivor, in the form given hereafter. See *post.* No. CVII. p. 350. CVIII. p. 362.

No. XCVIII.

An Appointment of a Gamekeeper *for the Preservation of Game, &c.*

Variations where for the preservation of *Fish.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*lord of the manor*) (1), of, &c. Lord of the manor of , in the county of , SEND GREETING. KNOW YE, that I the said (*lord*) do hereby nominate, appoint, and depute (*gamekeeper*) (2) of, &c., , in the county of , to be gamekeeper during my pleasure, of, in, and to my said manor of, &c. and all the royalties, rights, members, and appurtenances thereunto belonging, and for my use to keep and preserve the game from time to time, or the time being, in or upon my said manor, or any part thereof [*and* also keepers and preservers of the rivers, ponds and fisheries within the said manor], and to kill them for my use, under my orders and directions. AND I do hereby give and grant unto him the said (*gamekeeper*) as aforesaid, as such my gamekeeper, full power and authority to take, seize, detain and keep (3) guns, bows, dogs, ferrets, tram-

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(1) Lords of manors are empowered by 5 An. c. 14, and 48 Geo. III. c. 93. to appoint gamekeepers to preserve or kill game within the manor, but in order to authorise the gamekeepers to seize engines, &c. for the destruction of game, the lord must be of the degree of an Esquire or upwards. See *post.* n. (3). 48 Geo. 3. c. 93.

(2) The person to be appointed gamekeeper may be any person whomsoever and is not required to be qualified to kill game under the Game Laws. See 48 Geo. III. c. 93.

(3) In order to give a gamekeeper authority to seize engines, &c., the lord must be of the degree or rank of a legal *Esquire*: viz. the son of a Peer or Lord of Parliament; the eldest son of the younger son of a Peer, or his eldest son; the eldest son of a Baronet; the eldest son of a Knight, or his eldest son; an Esquire expressly so created by the King's letters patent, or his eldest son; a Barrister at Law; a Justice of the Peace of a county, whilst in commission; Sheriff of a county; a Captain in the army or navy;—but the lord, without being an Esquire, may appoint a gamekeeper to kill or to preserve the game for his use. See 22 and 23 Car. II. c. 25.; and 1 Black. Com. 406. Who may appoint gamekeeper.

APPOINTMENTS. *Gamekeeper.*

mels, low bells, hayes, nets, hare pipes, snares, wires, or other engines or implements whatsoever, found in or upon the said manor for the taking or destroying of hares, pheasants, partridges or other game, contrary to the laws of this realm. [And also to seize, detain and keep for my use, all nets, (1) angles, oziers, leaps and piches, found in or upon my said manors, rivers, ponds, and fisheries, or any of them, or any part of the same.] AND further I do hereby give and grant unto him the said (*gamekeeper*) full power and authority to do all and every other act and acts, thing and things, which I lawfully can or may authorize or empower him the said (*gamekeeper*), necessary for the preservation of the game within the said manor, and for the discovery and conviction of offenders in the destruction and pursuit thereof, against the laws of this realm. IN WITNESS, &c.

Signed, sealed, &c. (2)

Fish. (1) Although the gamekeepers of lords of manors cannot seize engines, &c. for the destruction of game, unless the lord be of the degree of an *Esquire* (see *ante*, p. 307, n. (3)), yet by 4 William and Mary, c. 23. the owners or occupiers of fisheries of whatsoever degree, or their *appointees* are empowered to seize nets, &c. used for the taking of fish.

Seal. (2) The appointment of a gamekeeper, under 22 and 23 Car. II. c. 25. with authority to seize engines must be under the hand and seal of the lord; but if appointed under 48 Geo. III. c. 93. with authority only to preserve or kill game, it is apprehended it need not be under seal.

*** This appointment must be registered with the Clerk of the Peace of the county or place in which the manor lies. 25 Geo. III. c. 50.

No. XCIX.

An Appointment of a Guardian *by an Infant* (1).

KNOW ALL MEN BY THESE PRESENTS (2), that I (*the ward*), of, &c., son and heir of , deceased, being of the age of years and upwards, HAVE elected, nominated, and appointed, and by these presents Do elect, nominate, and appoint (*the guardian*), of , to be my guardian and the curator of my person and property until I shall attain the age of 21 years; [*to do, perform, and execute for me and on my behalf all such acts, deeds, matters, and things relating to me and to my estates, property, and effects, as a lawful guardian is empowered by law or otherwise ought to do; unless he the said (*guardian*) shall leave the united kingdom to reside abroad, or shall refuse or become incapable to act in the said guardianship, or shall become bankrupt or insolvent, in either of which cases I do hereby declare these presents and the appointment aforesaid to cease and become void.*] AND I hereby promise to be advised, ruled, and governed by him my said curator or guardian in all things touching my said con-

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(1) By the common law an infant destitute of any lawful guardian, may at any age appoint such person as he may think proper to be a guardian of his person and estate, except that until the age of 14 the guardianship of such of his lands as he takes by descent (not being copyholds) devolves on the next of kin to whom such lands cannot descend, who is called his guardian in *soccage*, or by the common law. The appointment of a guardian by an infant can therefore only be after that age, or if before, of lands, or property to which he is entitled otherwise than by descent. See Quadring v. Downs et al., 2 Mod. 176; 1 Blac. Com. 461.; Co. Lit. 88. b. n.(16). But an appointment by an infant will not, however, it seems, preclude an application to the court; Curtis v. Rippon, 4 Madd. 462.

Infant may appoint guardian except of descended lands, at any age.

(2) No particular form of the appointment of a guardian seems to be pointed out by the law, but that conceived to be the most proper and most usually adopted is by writing under the hand and seal of the infant. See Co. Lit. 88. b. n. (16.)

No special form requisite.

APPOINTMENTS.
Guardian.

cerns, and conduct and welfare in life]. [AND (1) I do hereby authorise and empower the said (*guardian*) to enter upon and take possession of all and every my messuages, lands, tenements, and hereditaments whatsoever, whether freehold, copyhold, or leasehold, situated, lying, and being in the county of, or elsewhere, in or to which I now have or hereafter may have any estate, right, title, or interest, and to let (2) and demise the same at his discretion, until I shall attain the said age, and to receive and take the rents, issues, and profits thereof as the same shall from time to time become due and payable for my use and benefit, and also to have, receive, take, and possess himself of all and singular my personal estate and effects (3) whatsoever for my use and benefit, and to give acquittances and discharges for all and every the monies and property aforesaid], and to do all and every such other acts, matters and things whatsoever, as shall or may be requisite or expedient relative to me or my estate and property during the term aforesaid, I hereby giving unto him the said (*guardian*) full powers in and concerning the premises; and I do hereby promise to allow and confirm whatsoever he shall lawfully do or cause to be done therein by virtue hereof. IN WITNESS, &c.

Guardian's authority derived from the law.

(1) *The following part of the precedent included within brackets although found in most forms, appears to be unnecessary, not only because the authority assumed to be given to grant leases, &c., is inherent in the guardian *per se*; Shoplane v. Roydle, Cro. Ja. 99. 3 Bac. Abr. tit. "Guardian"; but because all the authorities of a guardian are derived from the law, and not from the infant; see ibid. And it is clear that cannot authorise another to do what he is incompetent to do himself.

Guardian appointed by infant has the same power as guardian in soccage.

(2) A guardian appointed by the infant himself, it should seem, will have the same power over his general property as a guardian in soccage has over lands descended to him, "for both guardians are of the same nature, and have the same office and employment assigned to them by the law without any direction or intervention of the infant himself, they being therefore appointed because the infant, in regard of his minority, is supposed incapable of managing himself and his estate, and consequently they derive their authority not from the infant but from the law;" 3 Bac. Ab. 403. And the authority of such guardian extends to the making of leases to continue until the infant arrive at the age of 21 years; Lit. s. 123, 124; and all such acts relative to the management of the infant's estate as are requisite for his benefit and advantage, Co. Lit. 88, 89; Shopland v. Ryoler, Cro. Jac. 55, 98; but not such as are unnecessary or may be prejudicial to him; Tullit v. Tullit, Amb. 370; Audley v. Audley, 2 Vern. 192, 193.

May make leases until 21, and manage the infant's general concerns.

Authority of guardian extends to every kind of property.

(3) The general opinion appears to be, that the authority of a guardian when appointed extends to every species of property of the infant, as well personal as real. See Co. Lit. 88. b. n. (13); 3 Bac. Ab. (8vo. ed.) 403.

No. C.

An Appointment of a Rent-charge out of Freehold Land, *by way of a* Jointure (1) *in pursuance of a power contained in a Marriage Settlement or Will.*

Variations where a term of years is raised for the purpose of securing the payment.

THIS INDENTURE of two parts, made the day of , in the year of our Lord . BETWEEN (*the intended husband*) of, &c. of the one part, and (*the intended wife*) of, &c. of the other part (2). WHEREAS by indentures of lease and release, bearing date respectively the and days of , which was in the year , the release being of three parts, and made or expressed to be made between the said (*intended husband*) of the first part, (*the former wife*) of, &c. of the second part, and (*the trustees*) of, &c. of the third part, purporting to be a settlement made in contemplation of a marriage, then intended to be had, and which afterwards took effect between the said (*intended husband*) and the said (*former wife*) certain messuages, lands, tenements, and hereditaments, therein and hereinafter more particularly described, were settled, conveyed, and assured to the use of the said (*intended husband*) and his assigns, for the term of his natural life; with divers remainders over. AND (3) in

Recital of marriage settlement

and power to jointure.

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(1) A jointure strictly is a joint estate in freehold lands limited to the husband and wife (Co. Lit. 366), but on account of the inconveniences attendant upon a jointure of this kind, as well to the widow as the heir (see 2 Elem. Conv. (2d ed.) p. 287), it is now out of use, and a rent-charge is usually granted in lieu of it. Of the appointment of rents-charge by way of jointure, see *ante*, MOD. PREC. Vol. 7. pp. 262. n. (1), 300. n. (1); also 1 Elem. Conv. 321; 2 ib. 287. (2d edit.) If the rent-charge be to issue out of copyholds, see *post*. Tit. COVENANT.

Jointure, what.

Copyholds.

(2) If a term of years be created for the better securing the jointure (which is generally proper), make the husband of the first part, the intended wife of the second part, and the trustee of the term of the third part.

Term of years.

(3) If the jointure be in pursuance of a power contained in a *will*, recite the will, in the usual form, with the power *verbatim*, as above.

Will.

APPOINTMENTS.
Jointure (before marriage).

the said indenture of release, there is contained a proviso, empowering the said (*intended husband*) in the event of his surviving the said (*former wife*), by any deed or deeds or other writing or writings to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses (1), at any time after the decease of the said (*former wife*), to grant, limit, and appoint, unto and for any woman or women, whom he might thereafter marry, either prior or subsequently to the said marriage, for and during the life or lives of such woman or women respectively, as or in the nature of a jointure for her or them respectively, any rent or annual sum, not exceeding the clear yearly sum of £ , to be issuing out of, and charged, and chargeable upon all or any of the lands and hereditaments thereinbefore granted and released or otherwise assured, by even quarterly payments, on the day of , the day of , the day of , and the day of in every year, with such powers of distress and entry, and other lawful powers and remedies (2) for the purpose of securing the due payment thereof, as he the said (*intended husband*) should think proper. AND WHEREAS the said (*former wife*) hath since departed this life. AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized (3) between the said (*intended husband*) and the said (*intended wife*). AND WHEREAS the said (*intended husband*) is desirous of exercising the power of appointment so given to him, by the hereinbefore in part recited Indenture of Settlement, in favor of the said (*intended wife*). NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the power and authority so given or re-

Death of former wife.
Intended marriage.

WITNESS.
The intended husband limits and appoints unto the intended wife.

Appointment conform to power.

(1) *It is in general requisite to the validity of an appointment that the instrument of appointment should conform in every particular with the terms of the power; and although in favor of a wife this rule has been frequently relaxed, see Tollet v. Tollet, 2 P. Wms. 489, and cases there cited, yet it will not be safe to allow of a deviation.

Term of years.

(2) If the husband have the power of creating a term for the purpose of securing the payment of the jointure, add,

"And with such term of years to be created or raised for the purpose of securing the same, &c." *as above.*

27 Hen. 8.

(3) *A strict jointure must be appointed before the marriage, as if not till afterwards, the wife, by 27 Hen. VIII. c. 10. may, upon the death of her husband, refuse, and claim her dower at the common law; as she also may where the provision is a rent-charge in lieu of a jointure, as above, unless made before marriage, or in pursuance of an agreement upon the marriage.

APPOINTMENTS.

Jointure (before marriage).

served to him the said (*intended husband*) by the hereinbefore in part recited indenture of release of the day of , and of every, or any other power or authority, enabling him thereunto, and in consideration of the said intended marriage, and for the purpose of making a provision for the said (*intended wife*) in case she shall happen to survive him, HE the said (*intended husband*) HATH granted, limited and appointed, and by this present deed or writing, by him sealed and delivered in the presence of, and attested by the two credible persons whose names are or are intended to be hereupon indorsed, as witnesses attesting the same, DOTH grant, limit, and appoint, unto the said (*intended wife*) in case the said intended marriage shall take effect, and the said (*intended wife*) shall happen to survive him the said (*intended husband*), the yearly rent or annual sum (1) of £ of lawful money of the United Kingdom of Great Britain and Ireland, to be issuing, and payable, and had, received, and taken out of and from, and charged, and chargeable upon ALL, &c. being the same lands and hereditaments as are comprised (2) in the hereinbefore in part recited indenture of release, and thereby conveyed to the use of the said (*intended husband*) for the term of his natural life, as hereinbefore is mentioned. TO HAVE, HOLD, receive, perceive, take and enjoy the said yearly rent or annual sum of £ , hereinbefore granted, limited, and appointed, or mentioned, or intended so to be, unto and by the said (*intended wife*) and her assigns, from and immediately after the decease of the said (*intended husband*) her intended husband, for and during the term of her natural life, and up to the day (3) of her decease, to and for her own use and benefit, for or in nature of a jointure, and in lieu, bar, and full satisfaction of or for all dower, freebench, and thirds, at the common law, or by custom or otherwise, which she the said (*intended wife*) can or may, or otherwise might have, claim, or be entitled to, in, to, or out of all or any of the messuages, lands, tenements, and hereditaments whatsoever, whereof he the said (*intended husband*) now is, or shall or may during the said intended coverture, be seised for any estate of inheritance in possession, or for other dowable estate or interest whatsoever; The said

The yearly sum of £ , by way of jointure.

In bar of dower.

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(1) See form, where land is limited instead of a rent-charge, *post.* p. 319.

(2) If the power be contained in a will, say, Will.

Devised by the said in part recited will of the said (*testator*) deceased, to the said (*intended husband*) for his life as aforesaid.

(3) See *ante*, Mod. Prec. Vol. 6. p. 23. n. 27.

APPOINTMENTS.

Jointure (before marriage).

yearly rent or annual sum of £ , to be paid and payable at or in the common Dining Hall of the Inner Temple, London (1), between the hours of 10 and 12 of the clock in the day time, on the day of , the day of , the day of , and the day of , in each and every year; and also a due and proportionate part of the said yearly rent or annual sum, for or in respect of so many days as shall happen to have elapsed next after the last quarterly payment thereof, preceding the decease of the said (*intended wife*), up to and until the day of her death, all which said payments are to be made clear of all deductions and abatements whatsoever, the first payment thereof to be made on such of the said days, or times of payment, as shall next happen after the decease of the said (*intended husband*) (2). AND the said (*intended husband*) in further exercise of the power and authority for this purpose to him

Power of distress if 14 days in arrear.

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(1) See *ante*, 6 MOD. PREC. p. 22. n. 26.

Term of years.

(2) If the husband have the power of creating a term of years for the purpose of better securing the payment of the rent-charge (which will be proper in case there is any probability of the powers of entry and distress becoming ineffectual), say,

"AND for better securing the payment of the said yearly rent or annual sum of £ unto the said (*intended wife*) as hereinbefore is mentioned, HE the said (*intended husband*) pursuant to and in further exercise of the power and authority for this purpose given or reserved to him by the hereinbefore in part recited indenture, HATH granted, demised, limited, and appointed, and by this present deed or writing by him sealed, delivered, and attested in the manner hereinbefore mentioned, DOTH grant, demise, limit, and appoint, that from and immediately after the decease of him the said (*intended husband*) leaving the said (*intended wife*) him surviving, ALL and singular the messuages, lands, tenements, and hereditaments hereinbefore charged with the payment of the said yearly rent or annual sum of £ shall be and enure unto (*the trustees*) of, &c. their executors, administrators, and assigns, for and during the full end and term of years, to be computed from the day of the death of the said (*intended husband*), UPON TRUST for the said (*intended wife*) and her assigns, for better securing the payment of the said yearly rent or annual sum of £ , so limited and appointed to her as hereinbefore is mentioned at the times and in the manner hereinbefore mentioned, in that behalf, and for that purpose to demise, lease, mortgage, sell, or otherwise dispose of the said term, or any part thereof, or the premises therein comprised, and use and exer-

given as aforesaid, DOTH by this present deed or writing by him sealed, delivered, and attested as hereinbefore is mentioned, further grant, limit, appoint, and direct, that in case the said yearly rent or annual sum of £ , or any part thereof, shall be in arrear and unpaid by the space of 14 days next over or after any or either of the days or times, at or upon which the same is hereby made payable, then and from thenceforth, and from time to time, as often as the same shall happen, it shall be lawful for the said (*intended wife*) and her assigns, and full and absolute power and authority is hereby given to her and them in every such case, into and upon all and every or any the messuages, lands, tenements, and hereditaments, so charged with the payment thereof, or mentioned or intended so to be as aforesaid, to enter and distrain (1), and the distress and distresses there found to lead, drive, and carry away, and sell and dispose of according to law, in like manner as in cases of distress taken for non-payment of rent reserved upon ordinary leases for years. AND FURTHER, that in case the said yearly rent or annual sum of £ , or any part thereof, shall be in arrear and unpaid by the space of 28 days next over or after any of the said days or times, at or upon which the same is hereby made payable as aforesaid, then and in such case, and from time to time, as often as the same shall happen (although no formal or legal demand shall be made thereof), for her the said (*intended wife*) and her assigns, to enter (2) into and upon, and hold, occupy, possess, and enjoy, all and singular the messuages, lands, tenements, and hereditaments, so charged with the payment thereof, or mentioned or intended so to be as aforesaid, or into and upon any part or parcel thereof in the name of the whole, and to have, hold, occupy, possess, and enjoy the same, and receive, take, and retain the issues, rents, and growing produce thereof, to and for her, and their own use and benefit, until thereby or otherwise, she the said (*intended wife*) and her assigns, shall be fully paid and satisfied the said yearly rent or annual sum of £ , and all arrears thereof, whether the same shall have accrued before or during the time of such possession, together with all costs, damages and expences, which she

Power of entry if in arrear for 28 days.

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cise all and every other lawful and reasonable ways and means, incident to the said term, for raising and paying the same or any part thereof (if in arrear), or any costs, charges, or expences incurred or occasioned by any default in payment thereof."

(1) See *ante*, MOD. PREC. Vol. VI. p. 25. n. (33).

(2) See *ibid.* p. 26. n. (34).

APPOINTMENTS.

Jointure (before marriage).

or they shall be put unto, or sustain, or become liable to pay by reason of the non-payment thereof, which possession when taken, shall be without impeachment of waste, other than wilful and malicious waste (1). AND the said (*intended husband*) doth hereby for himself, his heirs, executors, and administrators, covenant and declare to and with the said (*trustee*), his executors, administrators, and assigns, that he the said (*intended husband*), hath at the time of the sealing and delivery of these presents, good right, full power, and lawful authority, under or by virtue of the said in part recited indenture of settlement or otherwise, to grant, limit, and appoint, unto and to, and for the benefit of the said (*intended wife*), for her life, and for her jointure as aforesaid, the said annual sum or yearly rent-charge of £ , and to make the same issuable out of and chargeable upon the aforesaid hereditaments and premises, in the manner hereinbefore expressed. AND further, that she the said (*wife*) and her assigns, shall and may at all times during the term of her life (in case the said intended marriage shall take effect, and she shall happen to survive the said (*intended husband*) her said intended husband, peaceably and

Covenant that husband has power to grant, &c.

Quiet enjoyment by wife.

Present appointment not to preclude further appointment.

(1) If the jointure appointed to the wife be less than the sum authorized by the power, there may here be added a proviso enabling the husband to increase it to that amount, in which case say,

"PROVIDED ALWAYS, and it is hereby declared, that the grant, limitation, and appointment hereby made of the said yearly rent or annual sum of £ to the said (*intended wife*) as aforesaid, or any clause, matter, or thing, herein contained, shall not extend, or be construed to extend, to prevent or hinder the said (*intended husband*), at any time or times after the said intended marriage shall take effect, from granting, limiting, and appointing any further yearly rent or annual sum to the use of the said (*intended wife*), in case she shall survive him, to be issuing out of and chargeable upon the lands and hereditaments, to be hereby charged with the said yearly rent or annual sum of £ , so that such further yearly rent, or annual sum, do not together with the said yearly rent or annual sum, so already granted, limited and appointed, exceed such yearly rent-charge or annual sum of £ , as he the said (*intended husband*) is empowered to grant, limit, and appoint, under or by virtue of the hereinbefore in part recited indenture of release, so that such future rent-charge or rent-charges do not, together with the said rent-charge of £ hereby granted, exceed such annual sum as he the said (*intended husband*) is by the said in part recited indenture empowered to grant, limit, or appoint, to or for the use or benefit of any woman he might marry."

APPOINTMENTS.
Jointure (before marriage).

quietly have, hold, receive, perceive, take, and enjoy, the said annual sum or yearly rent-charge of £ , so granted, limited and appointed to her jointure as aforesaid, to and for her and their own proper use and benefit, according to the true intent and meaning of the said indenture and of these presents, without any lawful eviction, interruption, hindrance, or disturbance whatsoever, of, from, or by any person or persons whomsoever, and that free and clear, and freely and clearly acquitted, exonerated, and discharged, of, from, and against all former and other grants, limitations, appointments, jointures, charges and incumbrances whatsoever. AND further, that the said (*intended husband*) and his heirs, and all and every other person and persons whomsoever, lawfully or rightfully claiming, or to claim, by, from, or under him or them, or by, from, or under the said deceased, shall and will at the request of the said ( ) at his and their own proper costs, make, do, and execute, or cause and procure to be made, done, and executed, whether by fine, common recovery or otherwise, all and every act, deed, matter or thing whatsoever, for the further, better, and more perfectly and satisfactorily granting, limiting, appointing and assuring, the said annual sum or yearly rent-charge of £ , unto or for the benefit of the said (*intended wife*) and her assigns, during her life, in case the said intended marriage shall take effect, and she shall happen to survive the said (*intended husband*) her intended husband, for her jointure as aforesaid, and for the further and better enabling her, the said (*intended wife*) and her assigns, to receive the same, and all arrears thereof, by all or any of the ways or means aforesaid, as by him the said (*trustee*), his executors, administrators or assigns, or his or their counsel in the law shall reasonably require. IN WITNESS, &c.

Further assurance.

APPOINTMENTS.

Jointure (after marriage).

No. CI.

**Appointment of Lands* (1) *by way of* Jointure *after marriage* (2), *in pursuance of a covenant contained in a marriage settlement* (3).

THIS INDENTURE of parts, made the day of , in the year &c., and in the year of our Lord . BETWEEN (*the husband*) of, &c., of the first part, (*wife*) his wife, late spinster, of the second part, and (*trustees*) of, &c., of the third part. WHEREAS &c., [*recite the settlement or will authorizing the appointment*]. And by the same indenture the said (*husband*), for himself, his heirs, executors and administrators, covenanted, promised and agreed, to and with the said (*trustees*), their heirs and assigns, that in case the said then intended marriage should take effect, and the said (*husband*) should at any time during the coverture between him and the said (*wife*), become possessed of, or entitled to any money, stock, securities, or other personal estate or effects, to the amount or value of £ , or upwards, in right of the said (*wife*), he the said (*husband*), his heirs, executors or administrators, would, from time to time, within calendar months next thereafter, well and sufficiently settle, convey and assure to the use of the said (*wife*) his then intended wife and her assigns, during the term of her natural life (in case she should survive the said (*husband*) her said then intended husband), freehold messuages, lands and hereditaments, in fee simple in possession of the yearly value of £ , over and above all reprises and outgoings (parliamentary taxes only excepted), or in lieu thereof one annuity or yearly rent-charge of £ , free from all taxes and deductions whatsoever, to be issuing out and charged upon

Recital of marriage settlement.

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(1) See *ante*, p. 311. n. (1).

(2) Although the jointure be made after the marriage, yet if it be in pursuance of covenant before the marriage to which the wife assented, it will be a bar to her dower notwithstanding. Sec. 7 of the stat. 27 Hen. VIII. c. 10.

(3) See a covenant to jointure, *post.* COVENANT.

APPOINTMENTS.
Jointure (after marriage).

freehold messuages, lands and hereditaments, for each £ , which he the said (*husband*) should so become possessed of, or entitled to in right of the said (*wife*) [over and above (*if so*) an augmentation of the jointure or provision made for her in or by the same indenture] (as relation being thereunto had, will more fully and at large appear). And whereas the said intended marriage was shortly after solemnized. And whereas the said (*husband*) hath lately become possessed of or entitled to the sum of £ , in right of his said wife, under or by virtue of the last will and testament of, &c., *or* as next of kin of, &c., deceased [*as the case may be*]. And is desirous, and has agreed to settle and assure the lands and hereditaments hereinafter described, to the use of his said wife during the term of her natural life in augmentation of her jointure from and after the decease of him the said (*husband*), in pursuance and satisfaction of the aforesaid covenant in that behalf. NOW THEREFORE THIS INDENTURE WITNESSETH, that to the end, intent and purpose of making a provision for [*or* of augmenting the jointure of] the said his wife, and in consideration of the sum of ten shillings of lawful and current money of England to him the said (*husband*), in hand paid by the said (*trustees*), at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged); he the said (*husband*) HATH granted, bargained, sold, aliened and released, and by these presents DOTH grant, bargain, sell, alien, release and confirm unto the said (*trustees*), ALL that &c. &c., TOGETHER with all houses, buildings, yards, gardens, orchards, ancient and other lights, ways, water-courses, rights and privileges of common of every kind, and all and all manner of other privileges, easements, advantages, appendages and appurtenants whatsoever to the said hereditaments and premises, or any part thereof, belonging or with the same or any part thereof now or heretofore holden, occupied or enjoyed (all which said messuages, lands and hereditaments are now in the possession of or legally vested in the said (*trustees*) by virtue of a bargain, shall for a year to them thereof made by the said (*husband*) for five shillings consideration, by an indenture bearing date on the day next before the date of these presents, and by force of the statute made for transferring uses into possession), and the reversion and reversions and remainder and remainders, of and in the said hereditaments and premises, and the rents, issues and proceeds thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of him the said (*husband*) in, to or respecting the said hereditaments and premises, or any part thereof. TO HAVE AND TO HOLD the said messuages, lands, hereditaments, and all and singular

WITNESS.
Husband grants &c. lands to trustees.

To hold for use of husband for life.

APPOINTMENTS.

Jointure (after marriage).

other the premises hereby granted and released or otherwise assured or intended so to be, with their and every of their rights, members and appurtenances unto the said (*trustees*) and their heirs, to the use and behoof of him the said (*husband*) and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste, and from and after the decease of him the said (*husband*) to the use and behoof of the said his wife, for and during the term of her natural life, in case she shall survive the said (*husband*) her said husband, and from and after the decease of her the said (*wife*) to the use and behoof of the said (*husband*), his heirs and assigns for ever. AND it is hereby declared and agreed by and between all and every the parties to these presents, that the conveyance or assurance hereby made to the use of the said (*wife*), in the event of her surviving the said (*husband*), shall, when the same shall take effect, be deemed and construed, and is meant and intended to be in pursuance, satisfaction and performance of the hereinbefore recited covenant, to the extent and amount of the money, personal estate, property and effects to which the said (*husband*) has already became possessed of or entitled unto in right of the said (*wife*) his wife since their said marriage, and in lieu of dower and thirds at common law to the same extent or amount, but not further or otherwise. AND the said (*husband*) for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said (*trustees*), their heirs and assigns, that (1) he the (*husband*) and his heirs, all and every other person and persons, now or hereinafter having or lawfully claiming any estate, right, title, trust or interest of, in, to or out of the messuages, lands, hereditaments and premises hereby granted and released, or otherwise assured or intended so to be as aforesaid, or any part thereof, by from or under, or in trust for him, shall and will from time to time and at all times hereinafter, at the request of the said (*trustees*), their heirs or assigns, but at the costs and charges of him the said (*husband*) his heirs, executors or administrators, make, do, acknowledge, levy, suffer and execute, or cause or procure to be made, done, acknowledged, levied, suffered and executed, all and every such further and other lawful acts, deeds, things, fines, recoveries, conveyances and assurances in the law whatsoever, for the further, better, more perfectly, or satisfactorily granting, conveying, assuring and confirming

Remainder to use of wife for life.

Covenant by husband for further assurance.

(1) As this provision will not be a bar of dower if the title be defective or encumbered, covenants for the title need not be inserted.

APPOINTMENTS.
Jointure (after marriage).

the same hereditaments and premises, or any part thereof with their appurtenances, unto the said (*trustees*) and their heirs, or unto all and every other trustees or trustee of the said in part recited indenture of settlement for the time being, and their or his heirs and assigns, to the uses and for the ends and purposes hereinbefore expressed or intended, as by them or him the said trustees or trustee, or their or his counsel in the law shall be reasonably required (1). IN WITNESS. &c.

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(1) A provision for appointing a further jointure, as *ante*, p. 316. n. (1), may be inserted here if so intended. Future appointment.

APPOINTMENTS.

Personal Estate (Bank Annuities).

No. CII.

An Appointment by a Feme Covert of Bank Annuities *in pursuance of a marriage Settlement.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the appointor*) of, &c. wife of (*husband*) of, &c. late spinster, SENDETH GREETING.

Recital of marriage settlement.

WHEREAS by indenture bearing date on or about the day of and made or expressed to be made between (*husband*) of, &c. of the first part, the said (*wife*) by her then name, and addition of of, &c. spinster, of the second part, and (*trustees*) of, &c. trustees therein named for the purposes therein expressed of the third part (purporting to be a settlement made previously to and in contemplation of a marriage then intended, between the said (*husband*) and said (*wife*)), it was amongst other things declared and agreed by and between the parties thereto, that the said (*trustees*), their executors, administrators and assigns, should stand possessed of £ per cent. Consolidated Bank Annuities therein mentioned to have been that day transferred into the names of the said (*trustees*) in the books of the Governor and Company of the Bank of England, in trust, for the sole, separate and independent use and benefit of the said (*wife*), free from the controul, intermeddling, debts and engagements of the said (*husband*) (her then intended husband), in case the said marriage should take effect, in like manner, as if the said (*wife*) had continued sole and unmarried, during the term of her natural life; and after the decease of the said (*wife*) then in trust to transfer the same, or so much thereof as should remain undisposed of by the said (*wife*) in her life time, to such person or persons and in such proportions as she the said (*wife*) by her last will and testament, in writing, or any other writing or writings under her hand and seal, duly attested, should direct or appoint; and in default of any such direction or appointment, in trust to transfer the same to the executors or administrators of her the said (*wife*). AND WHEREAS the said Bank Annuities were transferred into the names of the said (*trustees*) in pursuance of the said indenture, and are now standing in their names upon the trust thereof. NOW KNOW YE, that she the said (*wife*),

Appointment.

APPOINTMENTS.

Personal Estate (Bank Annuities).

by virtue and in pursuance of the powers, authorities, and limitations in the hereinbefore in part recited indenture contained, and of all and every or any other power or authority enabling her hereunto, HATH directed and appointed, and by these presents under her hand and seal, and attested or intended to be attested by two credible persons, whose names are intended to be indorsed hereupon, DOTH direct and appoint, that they the said (*trustees*) or the survivor of them, do and shall, as soon as conveniently may be hereafter, sell and dispose of the said £ per cent. Consolidated Bank Annuities at the market price thereof, and do and shall pay or cause to be paid the produce of the monies arising by such sale, [*or* do and shall transfer the said Bank Annuities], together with the dividends or profits accrued thereon (after deducting the costs and charges of such sale), unto of, &c. [*or as the case may be*], or to his assigns, to and for his and their sole and separate use and benefit, according to the trusts and true intent and meaning of the said hereinbefore in part recited indenture; and upon receipt thereof, by him the said or his assigns, she the said (*wife*) doth hereby declare and appoint that the said (*trustees*), their executors and administrators, and every of them, shall thenceforth be absolutely freed, released and discharged of and from all and every the trusts, delarations, and agreements, in or by the said in part recited indenture of settlement contained or declared of or concerning the said £ Bank Annuities, and every part thereof, and all dividends and profits thereof. IN WITNESS, &c.

APPOINTMENTS.

Personal Estate (to children).

No. CIII.

An Appointment of Money in the Funds, *by Husband and Wife to their Children, under a power contained in a Marriage Settlement.*

Variations where the appointment is by survivor of husband and wife.

Recital of marriage settlement.

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the husband*) of, &c., and (*wife*), his wife, send greeting. WHEREAS by virtue and in pursuance of an indenture bearing date the day of , which was in the year 18 , and made or expressed to be made between the said (*husband*) of the first part, the said (*wife*) of the second part, and (*the trustees*) of the third part, purporting to be a settlement made in contemplation of a marriage then intended to be had, and which afterwards took effect between the said (*husband*) and (*wife*) his wife, the sum of £ three per cent. Consolidated Bank Annuities, was transferred into the names of the said (*trustees*) in the books of the Governor and Company of the Bank of England, UPON TRUST, from and after the solemnization of the said intended marriage, to pay the dividends, interest, and annual proceeds thereof, unto the said (*husband*) and his assigns, for the term of his natural life; and from and after his decease, unto the said (*wife*) and her assigns, for the term of her natural life, and from and after the decease of the survivor of them the said (*husband*) and (*wife*) his wife, UPON TRUST, to pay, assign and transfer the said sum of £ , three per cent. Consolidated Bank Annuities, and the stocks, funds, and securities for the same, and the dividends and interest thereof, unto, between, and amongst all and every, or such one or more of the child or children of the said marriage, at such age or ages, time or times, in such parts, shares, and proportions, if more than one, and manner and form, and upon such contingencies, and with and under such restrictions and conditions, and such powers, directions, and regulations, for maintenance, education, and advancement, as the said (*husband*) and (*wife*) his wife, at any time during their joint lives, in and by any deed or deeds, instrument or instruments in writing, to be by

APPOINTMENTS. *Personal Estate (to children).*

them, and each of them, sealed and delivered in the presence of, and attested by two or more credible witnesses, should either absolutely and irrevocably, or with power and powers of revocation and new appointment, jointly direct and appoint; and in default of such direction or appointment (1), then UPON SUCH TRUSTS, and for such ends, intents, and purposes, as in the said hereinbefore in part receited indenture, are expressed concerning the same. AND WHEREAS there is issue of the marriage, children, namely, [*insert here the names of the children*] (2). AND WHEREAS the said (*husband*) and (*wife*) his wife (3), are desirous of appointing the sum of £ , part of the said trust monies, or sum of £ , unto the said (*son*), and the sum of £ , other part (4) of the said trust monies, unto the said (*daughter*), in pursuance of the power given or reserved to them by the hereinbefore in part recited indenture. NOW THESE PRESENTS WITNESS, that in pursuance and part execution of the power and authority to them for that purpose reserved or given by the said hereinbefore in part recited indenture, and of every or any other

WITNESS. The husband and wife appoint.

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(1) If the appointment be made by the survivor of the husband and wife, say, Appointment by survivor.

"AND in default of any such direction or appointment, or in case of any such being made, and the same shall not take effect, or shall not be a disposition or appointment of the whole of the said trust, funds, and premises, then as to the same or so much thereof, of or concerning which no such disposition or appointment shall be made or take effect, UPON TRUST to pay, assign, and transfer the same Bank Annuities, and the stocks, funds, and securities for the same, and the dividends and interest thereof, unto, between, and amongst all and every or such one or more of the child or children of the said marriage, at such age or ages, time or times, in such parts, shares, and proportions, if more than one, and manner, and form, and upon such contingencies, and with and under such restrictions and conditions, and such powers, directions, and regulations, for maintenance, education, and advancement, as the survivor of them the said (*husband*) and (*wife*) his wife, and as to the said (*wife*) whether she shall be then sole or covert with or by any future husband, shall by any deed, &c." *as above.*

(2) If the deed include a revocation of a prior appointment, see *post.* No. CIV. p. 332. n. (2). Revocation.

(3) If the appointment be by the survivor of the husband and wife, see *ibid.* n. (1). Appointment by survivor.

(4) See *ibid.* p. 333. n. (2).

APPOINTMENTS.
Personal Estate (to children).

power or authority, enabling them thereunto, THEY (1) the said (*husband*) and (*wife*) his wife, HAVE (2) directed and appointed, and by this present deed or instrument in writing, by them and each of them, sealed and delivered in the presence of, and attested by the two credible persons, whose names are or are intended to be hereupon indorsed as witnesses attesting the same, Do direct and appoint that from and immediately after the execution of these presents, ALL that the said sum of £ , three per cent. Consolidated Bank Annuities, part of the said sum of £ , three per cent. Consolidated Bank Annuities now standing in the name of the said (*trustees*) in the books of the Governor and Company of the Bank of England as aforesaid, shall vest in and become the property of the said (*son*), his executors, administrators, and assigns; and that the sum of £ , three per cent. Consolidated Bank Annuities, further part of the said sum of £ , three per cent. Consolidated Bank Annuities, shall vest in, and become the property of the said (*daughter*), her executors, administrators, and assigns; and that the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, and other the trustees and trustee for the time being of the said trust monies, shall stand possessed of, and interested in the said several sums of £ , and £ , three per cent. Consolidated Bank Annuities, UPON TRUST from and after the decease of the survivor of them the said (*husband*) and (*wife*) his wife, to pay, assign, and transfer the same, and the dividends, interests, and annual proceeds, from thenceforth to become payable in respect of the same respectively, unto the said (*son*) and (*daughter*) respectively, and their respective executors, administrators, and assigns, to and for his, her, and their own absolute use and benefit [*or if so intended** unto and between all and every of them the said (*children or issue*), and such other child or children, if any, as may hereafter be born to the said (*husband and wife*), share and share alike, to take effect in possession from and after the decease of the survivor of them the said (*husband and wife*)]; *or* that the said sum of £ , by the said recited indenture covenanted or agreed to be assigned to and vested in the said (*trustees*) as aforesaid; and the stocks, funds, and

The sum of £ Bank Annuities to son.

And sum of £ , Bank Annuities to daughter.

Variation when appointment is to all the children.

Appointment by survivor.

(1) If the appointment be by the survivor of the husband and wife, see *post*. No. CIV. p. 334. n. (1).

Revocation of prior appointment.

(2) If the deed include a revocation of a prior appointment, see *ibid.* n. (2).

APPOINTMENTS.
Personal Estate (to children).

securities in or upon which the same is or shall or may be laid out or invested, shall be shared and divided among, and shall after the decease of the said (*appointor*), in the proportions following, that is to say, the sum of £ part thereof, to be the share of the said (*eldest son*), and to be an interest vested in him immediately upon the execution of these presents; AND the sum of £ other part thereof to be the share of the said *A.* (*daughter's married name*), and to be an interest vested in her immediately upon the execution of these presents. BUT the actual payment of the said sums of £ and £ , to be postponed until the decease of the survivor of the said (*appointor*). AND as to the sum of £ , being the remaining part of the said sum of £ , the same to be equally divided among the said (*son and four daughters*), share and share alike; the share of the said (*son*) to be an interest vested in him at his age of twenty-one years, and the share of each of them the said (*daughters*) to be an interest vested in her at the age of twenty-one years, or day of marriage, which shall first happen. BUT if the said (*son*), or any of them the said (*daughters*), should attain a vested interest in his, her, or their share or respective shares in the life time of the said (*appointor*) and (*other appointor*) his wife, or of the survivor of them, then the actual payment of his, her, or their share or respective shares shall be postponed until the decease of the survivor of the said (*appointor*) and (*other appointor*) his wife. PROVIDED ALWAYS, and the said (*appointor*) and (*other appointor*) his wife, Do hereby further direct and appoint that if the said (*son*) should happen to die under the age of twenty-one years, or if any of them the said (*daughters*) should happen to die under the age of twenty-one years without being or having been married, then the share or shares of him, her, or them so dying, of and in the said sum of £ shall go and accrue to the survivor and survivors of them, and shall vest in and be paid to him, her, or them (if more than one), in equal parts or shares, at or upon such and the same ages, days, and times respectively, and in such and the same manner as is hereinbefore directed or appointed touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will permit. AND that in case any other or others of such children should die before such accruing or surviving part or share, parts or shares shall become vested as aforesaid, then all and every such accruing or surviving part or share, parts or shares, shall again be subject and liable to such new chance, contingencies, and condition of accruer to the survivor or survivors and other or others of such children as before is declared touching his, her, and their original portion and portions.

APPOINTMENTS.

Personal Estate (to children).

AND the said (*appointor*) and (*other appointor*) his wife, Do hereby further direct and appoint, that in the mean time, after the decease of the survivor of them the said (*appointor*) and (*other appointor*) his wife, the income or the dividends, interest or annual produce of the presumptive share of each of them the said (*son*) and (*daughters*) of and in the said sum of £ , shall be applied by the trustees or trustee for the time being of the said recited indenture, for or towards his or her maintenance, education, and support, until such his or her share shall become vested, or he or she shall previously die. BUT, in case the said (*son*) should die under the age of twenty-one years, and if each of them the said (*daughters*) should die under the age of twenty-one years, and without being or having been married, then the said sum of £ shall be divided between the said (*eldest son*) and (*A.*) the wife of the said (*husband*), share and share alike, and their respective executors, administrators, and assigns. AND WHEREAS the said ( ) one of the sons of the said ( ) by the said ( ) his wife, is desirous of entering into the army, a commission of ensigncy in the regiment of hath been purchased for him, which, with fees and other expences attending the said purchase, will cost the sum of £ or upwards. AND whereas they the said (*appointor*) and (*other appointor*) his wife, are desirous that the said sum of £ should be raised out of the said trust monies; NOW THESE PRESENTS FURTHER WITNESS, that they the said (*appointor*) and ( ) his wife, in further pursuance of the power or authority so vested in them in or by the said in part recited indenture as aforesaid enabling them in that behalf, HAVE directed and appointed, and by this present instrument in writing by both of them signed and sealed in the presence of two credible witnesses, whose names are hereunto subscribed as witnesses attesting the same, Do direct and appoint that they the said (*trustees*) and the survivor of them, and the heirs, administrators, and assigns of the same, shall and do immediately or as soon hereafter as may be, by and out of the said £ Bank Annuities, the full sum of £ , of lawful money of that part of the United Kingdom called England, AND shall and do pay and apply the said sum, when the same shall be so raised, in completing the purchase of the said commission, to and for the use of him the said ( ) the son, as one of the children of the said marriage. IN WITNESS, &c. (1).

FURTHER WITNESS.

Revocation.

(1) Here may be added a power of revocation if thought fit, as *post.* p. 334. n. (2).

And if it be apprehended that any question may hereafter be raised

as to the due and fair execution of the power in regard to the distribution of the trust property, a release may be added (or prepared by a separate instrument) from such of the children whose shares may be less than those of the others: as

Release.

* AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said sum of £ part of the said trust money being so appropriated to and between them the said and as aforesaid, He the for himself, his executors and administrators; and she the for herself, her executors and administrators, have, and each of them HATH, remised, released, and for ever quit claim, AND by these presents Do, and each of them DOTH remise, release, and for ever quit claim unto the said (*trustee*), his heirs, executors, and administrators, AND also to the heirs, executors, and administrators, and assigns of the said (*deceased trustee*) deceased, ALL actions and suits, cause or causes of action or suit and other proceedings at law or in equity, accounts, reckonings, claims, and demands whatsoever, which they the said (*husband*) and (*appointee*) his wife, ( ) and ( ) respectively, or any or either of them, now have or hath or ever had, or can or may or otherwise could or might bring, commence, carry on, claim and demand against the said (*trustee*), his heirs, executors, administrators, or assigns, or the said (*deceased trustee*) deceased, his heirs, executors, administrators, or assigns, or any or either of them, or their or any or either of their lands, tenements, goods, and chattels whatsoever, for or on account of the said sixteen shipping shares, and sixteen fire shares in the said London Assurance Office so vested in them the said (*trustees*) as the trusts of the said indenture of the day of as hereinbefore recited, or any or either of them, or the dividends, interests, or yearly proceeds thereof or any part thereof, or the sum or sums of money produced by the sale or disposition of the said shares or any or either of them, or for or on account or in consequence of the trusts declared by the said indenture of the day of as aforesaid, or any of them, or any clause, matter, or thing whatsoever in the said indenture contained or in anywise relating thereto, from the day of the date of the said indenture up to the day of the date of these presents.

IN WITNESS, &c.

APPOINTMENTS.

Real Estate (to children).

No. CIV.

An Appointment of a Freehold Estate *by a Husband and Wife, to a child, under a power in a marriage settlement.*

Variations where the appointment is by the survivor of the Husband and Wife.—Where the appointment is to several children.—Where there is a revocation of a prior appointment.

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the husband*) of, &c. and (*wife*) his wife, send greeting. WHEREAS by indentures of lease and release, bearing date respectively the and days of , which was in the year , the release being of three parts, and made or expressed to be made between the said (*husband*) of the first part, the said (*wife*) of the second part, and (*the trustees*) of the third part, purporting to be a settlement made in contemplation of a marriage then intended to be had, and which soon afterwards took effect between the said (*husband*) and (*wife*) (1), certain messuages (2), lands, tenements, and hereditaments, therein and hereinafter more particularly described, were amongst others conveyed, settled, and assured unto the said (*trustees*) and their heirs, TO THE USE of the said (*husband*) and his assigns for and during the term of his natural life, without impeachment of waste; with remainder TO THE USE of the said (*trustees*) and their heirs, during the life of the said (*husband*) in trust to preserve contingent re-

Recital of marriage settlement.

Fine.

(1) If the settlement were accompanied by a fine, add,

"AND by a fine sur cognizance de droit come ceo, &c. acknowledged and levied by the said (*husband*) and (*wife*) his wife, before his Majesty's Justices of the Court of Common Pleas at Westminster, in pursuance of a covenant for that purpose, in the said indenture of release contained."

Leaseholds.

(2) If the premises be leasehold, say,

"WHEREAS by indenture bearing date the day of which was in the year , and made or expressed to be made

APPOINTMENTS.
Real Estate (to children).

mainders; with remainder To THE USE of the said (*wife*) (1) and her assigns, for and during the term of her natural life, without impeachment of waste; and from and after the decease of the survivor of them the said (*husband*) and (*wife*) his wife, To THE USE of all and every, or such one or more child or children, whether male or female, of the body of the said (*husband*) on the body of the said (*wife*) his wife to be begotten, for such estate and estates, interest and interests, and in such parts, shares and proportions, manner and form, and subject to such charges and payments to any one or more of such child or children, and with and under such restrictions, limitations and powers, with or without power of revocation, as they the said (*husband*) and (*wife*) his wife, at any time during their joint lives, in and by any deed or deeds, writing or writings, to be by them and each of them sealed and delivered in the presence of, and attested by two or more credible witnesses, should direct, limit, or appoint; and in default of such direction, limitation, or appoint-

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between, &c. certain leasehold messuages or tenements, pieces or parcels of ground, and premises therein more particularly described, were assigned unto the said (*trustees*), their executors, administrators and assigns, for the residue of the several terms of years then to come therein respectively, UPON TRUST, from and after the solemnization of the said then intended marriage, to pay the rents and profits of the said premises unto the said (*husband*) and his assigns, for and during the term of his natural life; and from and after his decease, unto the said (*wife*) and her assigns, for and during the term of her natural life; and from and after the decease of them the said (*husband*) and (*wife*) his wife, UPON TRUST TO assign and assure the said messuages or tenements, pieces or parcels of ground and premises, for all the residue of the several terms of years then to come therein respectively, unto or for the benefit of all and every or such one or more of the child or children of the said then intended marriage, for such estate and estates, interest and interests, &c." *as above.*

Father cannot appoint for his own benefit.

(1) It is a principle well established, that a father, having a power of appointment among his children, cannot derive to himself any benefit from the execution of it; Palmer v. Wheeler, 2 Ball and Beat. 39. An appointment therefore to a child, upon a secret understanding that the child shall re-assign a part to a stranger, will be void, not only to the extent of the sum assigned back, but in toto, and even though the settlement containing the power of appointment be voluntary; Darlberry v. Cockburn, 1 Mer. 626.

APPOINTMENTS.
Real Estate (to children).

ment (1), To SUCH USES, upon such trusts, and for such ends, intents and purposes, as in the said hereinbefore in part recited indenture of release, are expressed concerning the same. AND WHEREAS there is issue of the said (*husband*) by the said (*wife*) his wife, children now living, that is to say [*insert here the names of the children*] (2). AND WHEREAS the said (*husband*) and (*wife*) his wife

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Appointment by survivor.

(1) If the appointment be made by the survivor of the husband and wife, add,

"AND in default of such direction, limitation, or appointment, and as to such part or parts thereof, whereof there shall be no such direction, limitation, or appointment, and in case any such shall be made, then, when and as the estates and interests thereby directed, limited and appointed, shall respectively end and determine, To THE USE of all and every or such one or more child or children of the body of the said (*husband*) on the body of the said (*wife*), his then intended wife, to be begotten, for such estate or estates, interest and interests, and in such parts, shares and proportions, manner and form, and subject to such charges and payments, to any one or more of such child or children, and with and under such restriction, limitations and powers, with or without power of revocation, as the survivor of them the said (*husband*) and (*wife*) his then intended wife, after the death of the other of them, by any deed or instrument in writing, to be by him or her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by his or her last will and testament, or any codicil or codicils thereto, or any writing or writings purporting to be in the nature of his or her last will and testament, or codicil or codicils, to be by him or her signed and published in the presence of, and attested by three or more credible witnesses, shall direct, limit, or appoint; and in default of such direction, limitation, or appointment, To SUCH USES, upon such trusts, and for such ends, intents and purposes as in the said in part recited indenture of release are expressed concerning the same."

Revocation of a prior appointment.

(2) If the deed include a revocation of a prior appointment to one of the children, say,

"AND WHEREAS by a deed poll under the hands and seals of the said (*husband*) and (*wife*) his wife, bearing date the day of , which was in the year , certain premises, part and parcel of the premises comprised in the hereinbefore in part recited indenture of settlement of the day of , were limited and appointed unto and to the use of the said (*child*), his heirs and

APPOINTMENTS.
Real Estate (to children).

(1), are desirous of exercising the power of appointment so reserved to them by the hereinbefore in part recited indenture of release as aforesaid, in favour of the said (*one of the children*) as to a part (2) of the said settled estates. NOW THESE PRESENTS WITNESS, that in pursuance and in exercise and execution of the power and autho-

WITNESS. The husband and wife appoint.

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assigns; and in the said deed poll was contained a proviso or power that it should be lawful for the said (*husband*) and (*wife*) his wife, by any deed or writing under both their hands and seals, to be by them sealed and delivered in the presence of, and attested by two or more credible witnesses to revoke the same, and by the same or any other deed or writing, with or without power of revocation, to be by both of them sealed and delivered as aforesaid, to limit, appoint, or declare, any new or other use or uses, estate or estates, interest or interests, of or concerning the same premises or any part thereof, unto or for the benefit of the said (*child*) or any other or others of the said children, as to them the said (*husband*) and (*wife*) his wife, should seem fit. AND WHEREAS the said (*husband*) and (*wife*) his wife, are desirous of revoking and making void all and every the uses, estates and limitations, in or by the said hereinbefore in part recited deed poll, created or declared, concerning the said hereditaments, and of appointing such other uses thereof, as hereinafter are expressed."

Appointment must strictly accord with the power.

(1) Care must be taken in the execution of a power to appoint to the children of the appointor, that the power be strictly pursued, and not exceeded by the appointment of the whole estate to one exclusively of the other children, or to the issue of the children, instead of the children themselves, where no such selection is allowed by the terms of the power; see Menzy v. Walker, Ca. Temp. Talb. 72; Maddison v. Andrew, 1 Ves. 59; Coleman v. Seymour, ib. 211; Crompe v. Barrow, 4 Ves. 681; Spencer v. Spencer, 5 ib. 362; Kemp v. Kemp, ib. 849; and Butcher v. Butcher, 9 ib. 382, which is now considered as the ruling case upon the subject, and see also Bax v. Whitbread, 16 ib. 15.

Appointment by survivor.

(2) If the appointment be by the survivor of the husband and wife, say,

"AND WHEREAS the said (*husband*) [*or* wife, *as the case may be*] hath since departed this life. AND WHEREAS the said (*wife*) is desirous of exercising the power of appointment so reserved to the survivor of them the said (*husband*) and (*wife*) by the said hereinbefore in part recited indenture of release, in the manner hereinafter expressed."

Feme covert may exercise power.

The power of appointment given to the survivor may be exercised by the wife, in the event of her marrying again, without the concurrence of her husband, or the levying a fine; Peacock v. Monk, 2 Ves. 190.

APPOINTMENTS.
Real Estate (to children).

rity to them for this purpose reserved or given by the hereinbefore in part recited indenture of release, and of every or any other power or authority enabling them hereunto, THEY (1) the said (*husband*) and (*wife*) his wife, HAVE (2) directed, limited and appointed, and by this present deed or instrument in writing, by them and each of them, sealed and delivered in the presence of, and attested by the two credible persons, whose names are or are intended to be hereupon indorsed as witnesses attesting the same, Do (3) direct, limit

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Appointment by survivor.

(1) If the appointment be by the survivor of the husband and wife, say,

"SHE the said (*wife*) [*or as the case may be*], HATH directed, limited and appointed, and by this present deed, &c. DOTH direct, limit and appoint, that ALL that, &c." *as above.*

Revocation of prior appointment.

(2) If the deed include a revocation of a prior appointment, say,

"HAVE revoked, determined, and made void, and by this present deed or instrument in writing, by them and each of them sealed and delivered in the presence of, and attested by the two credible persons whose names are or are intended to be hereupon indorsed, as witnesses attesting the same, Do revoke, determine and make void, all and every the uses, estates and limitations, in and by the hereinbefore in part recited deed poll created and declared of and concerning the said hereditaments thereby appointed to the use of the said (*child*), his heirs and assigns, and by this same deed or instrument in writing, by them and each of them sealed and delivered as hereinbefore is mentioned, Do direct, limit and appoint, &c." *as above.*

Leaseholds.

(3) If the appointment be of leasehold property, say,

"Do direct and appoint that immediately upon the execution of these presents, ALL that leasehold messuage or tenement, situated at , being part and parcel of the messuages or tenements, and premises comprised in the hereinbefore in part recited indenture of assignment of the day of , shall vest in, and the said (*trustees*), and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, shall stand possessed of and interested in the same, IN TRUST for, and from and immediately after the decease of the survivor of them the said (*husband*) and (*wife*) his wife, shall assign and transfer the same unto the said (*child*), his executors, administrators and assigns, for all the residue and remainder of the term of years which shall be then to come therein."

APPOINTMENTS.
Real Estate (to children).

and appoint, that ALL (1) that capital messuage or dwelling-house, &c. &c. being part and parcel of the messuages, lands and hereditaments, comprised in the said hereinbefore in part recited indenture of release, shall be and enure, and the said (*trustees*) and the survivors and survivor of them, and the heirs of the survivor, and their and his assigns, and all and every other the trustees or trustee for the time being of the said hereditaments, shall stand and be seised of and interested in the same, subject only to the estate for life of the said (*husband*) and (*wife*) his wife respectively in the same premises, TO THE USE and behoof of him the said (*child*), his heirs and assigns for ever, and to and for no other use or purpose whatsoever (2). PROVIDED ALWAYS, and it is the true intent and

Parcels.

To the use of son in fee.

Power of revocation.

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(1) If the appointment be in favour of a son and daughter, or other children, say,

Appointment to several children.

"ALL and every the several messuages, lands, tenements and hereditaments comprised in the said hereinbefore in part recited indenture of release of the day of , shall be and enure, and the said (*trustees*), and the survivors and survivor of them, and the heirs of the survivor, and their and his assigns, and other the trustees for the time being of the said hereditaments, shall stand and be seised of and interested in the same, TO THE USES hereinafter declared concerning the same (that is to say), as to the said messuage or tenement situated at in the county of , part and parcel of the messuages, lands, tenements and hereditaments in the said in part recited indenture of settlement described, UNTO THE USE of the said (*eldest child*), his heirs and assigns, for ever; and as to the messuage or tenement situated at , other part and parcel of the said messuages, lands, tenements and hereditaments, UNTO THE USE of the said (*second child*), his heirs and assigns, for ever; and as to the messuage or tenement, lands and hereditaments, situated at , residue and remainder of the said messuages, lands, tenements and hereditaments, UNTO THE USE of the said (*daughter*), her heirs and assigns for ever."

(2) If the power extend to authorize an appointment to a stranger, in default of issue, the form may be as follows:

Variation.

"AND WHEREAS the said (*wife*) is of the age of and upwards, and hath not yet had any children or child of her body by the said (*husband*). Now know ye that she the said (*wife*), in pursuance of the power to her reserved and given in and by the said recited indenture of release, HATH limited, directed and appointed,

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meaning of the parties hereto, that it shall and may be lawful for the said (*husband*) and (*wife*) his wife, at any time or times hereafter, and from time to time during their joint natural lives, by any deed or deeds, or writing or writings, under both their hands and seals, to be by them sealed and delivered in the presence of, and attested by two or more credible witnesses, to alter or vary, or absolutely to revoke (1), determine, and make void all and every or any of the uses, estates and limitations hereinbefore made or declared of or concerning the premises hereby appointed to the said (*child*), and if they shall think proper, and choose so to do, but not otherwise, by the same, or any other deed or deeds, or writing or writings, with or without powers of revocation (2), to be by both of them the said

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and by this present writing sealed and delivered by her in the presence of, and attested by the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the execution thereof, DOTH direct, limit and appoint that all and singular the said lands and hereditaments, with the appurtenances, shall, from and after the several deceases of them the said (*husband and wife*), be and remain, and the said (*trustees*) and their heirs, and all and every other person and persons, and his and their heirs, standing and being seised of and in the said hereditaments, shall at all times after the death of the survivor of them the said (*husband and wife*) stand and be seised thereof, and of every part thereof, with the appurtenances, to the use and behoof of , his heirs and assigns for ever, and to and for none other use, intent and purpose whatsoever: Provided always nevertheless, that these presents shall not, nor shall any thing herein contained extend or be construed to extend to the prejudice of any issue of the said (*wife*) by the said (*husband*) begotten, or to be gotten, in case any such issue shall happen to be hereafter born. IN WITNESS," &c.

Where power of revocation good.

(1) As to where a power to revoke prior uses will be good, and where not, see *ante* MOD. PREC. Vol. VII. No. II. pp. 367, 368. n. (1), 394. n. (1), and the cases there cited.

Power of revocation necessary in order to a further appointment.

(2) Unless a power of revocation be reserved in the deed of new appointment, the appointment will be an execution and extinguishment of the power; Hele v. Bond, Prec. Ch. 474; D. Marlborough v. Godolphin, 2 Ves. 77; Ld. Teynham v. Webb, ib. 211.

Appointment by parents to one of the children is sometimes made to enable them to dispose of the estate for their own benefit, and such an appointment for this purpose seems to have been formerly holden to be good, but it is now settled that such appointments are a fraud upon the power, and void.

APPOINTMENTS.
Real Estate (to children).

(*husband*) and (*wife*) his wife, sealed and delivered, and attested as aforesaid, to limit, appoint, or declare, any new or other use or uses, estate or estates, interest or interests, of or concerning the same premises, or any part thereof, unto or for the benefit of the said (*child*) or any other or others of the said children, as to them the said (*husband*) and (*wife*) his wife, shall seem fit. IN WITNESS, &c.

APPOINTMENTS.

Receiver (of rents).

No. CV.

An Appointment of a Receiver *of Rents, &c.* (1) *to keep down the Interest of a Mortgage.*

Variations **where the purpose of the Receiver is to secure the payment of an Annuity.**

THIS INDENTURE (2) made the day of , in the year of the reign, &c., and in the year of our Lord . BETWEEN (*the mortgagor*) of, &c., of the first part, (*the mortgagee*) of, &c., of the second part, and (*the receiver*) (3) of, &c., of the third part (4). WHEREAS by indentures

Parties.

Recital of mortgage.

Appointment of receiver should be by separate deed.

(1) The appointment of a receiver is frequently made by the mortgage or other deed under which he is to act, but as he is generally, and indeed ought to be, some indifferent person not connected in interest with the transaction which gives rise to his appointment, the more convenient mode is by separate instrument, which prevents the occasion there must otherwise be of his having possession of the deed of assurance.

Deed.

(2) Every delegation of an authority must be by deed. Co. Lit. 52. a. but it is not necessary it should be by indenture.

Not essential that receiver be a party.

(3) It is usual and proper to make the receiver a party to the deed by which he is appointed. See Co. Lit. 52. b. but it is not requisite to the validity of his appointment. See 2 Roll. Ab. R. pl. 12. Shep. Touch. 217.

Receiver for payment of annuity.

(4) If the receiver be appointed for the purpose of securing the payment of an annuity, make the grantor a party of the first part, the grantee of the second part, and the receiver of the third part, and say,

" WHEREAS by an indenture of three parts, bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*grantor*) of the first part, the said (*grantee*) of the second part, and (*the trustee*) of the third part, the said (*grantor*) in consideration of the sum of £ to him paid by the said (*grantee*), gave, granted and confirmed, unto the said (*grantee*), his executors, administrators and assigns, during the natural life of him the said (*grantor*) [*or as the case was*], an annuity, or clear yearly rent charge, or sum of £ to be issuing and

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of lease (1) and release, the lease bearing date the day next before the day of the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the said (*mortgagor*) in consideration of the sum of £ therein expressed to be then advanced to him by the said (*mortgagee*) by way of loan, and at interest after the rate of £5 per cent. per annum until repayment thereof, at the time and in the manner therein appointed for that purpose, granted, released and assured, ALL, &c. (2) TO HOLD the said messuages, lands, tenements and hereditaments, unto and to the use of the said (*mortgagee*), his heirs and assigns for ever, for the purpose of securing the repayment of the

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payable out of, and charged and chargeable upon all and singular the messuages, lands, tenements and hereditaments, therein and hereinafter described, and payable by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, with powers of distress and entry upon, and perception of the rents and profits of the said hereditaments and premises so chargeable with the payment thereof, and other remedies for securing the same as therein contained. And for the better securing the payment of the said annuity, the said (*grantor*), at the request of the said (*grantee*), thereby demised ALL, &c. TO HOLD the same messuages, lands, tenements, hereditaments and premises, unto the said (*trustee*), his executors, administrators and assigns, for the term of years to be thence next ensuing, UPON THE TRUSTS therein expressed."

Mortgage by demise.

(1) If the mortgage be by demise, say,

"Whereas by indenture bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the said (*mortgagor*) in consideration, &c, *as above*, granted and demised ALL, &c. TO HOLD the same messuages, lands, tenements and hereditaments, unto the said (*mortgagee*), his executors, administrators and assigns, from the day next before the day of the date of the same indenture, for the term of years thence next ensuing, at the yearly rent of one peppercorn, if demanded, for the purpose, &c." *as above.*

Parcels.

(2) Insert here a description from the mortgage deed of the premises conveyed to the mortgage.

APPOINTMENTS.

Receiver (of rents).

said sum of £ on the day of now next ensuing, together with interest for the same after the rate aforesaid in the mean time, by equal half yearly payments on the day of and the day of in every year. AND WHEREAS upon the treaty for the said loan it was agreed that a receiver of the rents and profits of the said lands and hereditaments should forthwith be appointed, upon and for the trusts and purposes hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the considerations and purposes in the said in part recited indenture expressed, HE the said (*mortgagor*), at and by the nomination and request of the said (*mortgagee*), testified by his being a party to, and signing and sealing these presents, and also he the said (*mortgagee*) HAVE and HATH made, deputed, constituted and appointed, and by these presents DOTH make, depute, constitute and appoint, and in his and their place and stead, and respective places and steads, put the said (*receiver*) (1), his and their receiver, agent and true and lawful attorney, from time to time in his own name or in the name or names of them the said (*mortgagor*) and (*mortgagee*) (2) or either of them, or of their or his heirs or assigns, or otherwise, to ask, demand, collect in and receive all and every the rents, issues, and profits of all and singular the messuages, lands, tenements and hereditaments, hereinbefore and in the said in part recited indenture of the day of described or comprised, or mentioned or intended so to be, of and from the present and all future tenants and occupiers thereof respectively, and of and from all and every other person and persons liable to pay the same, as and when the same shall from time to time become due and payable; and to make such allowances for taxes or otherwise to the said tenants and occupiers, and other persons paying the same, as they respectively shall be lawfully entitled unto,

Agreement to appoint receiver.

WITNESS. Appointment of receiver.

To collect rents, &c.

Trustee of an estate ought not to be a receiver.

(1) It may here be observed to be a general rule of the Courts of Equity, that no person ought to be appointed a receiver who is a trustee of the estate; Anon. 3 Ves. 515; ——— v. Jolland, 8. ib. 72; unless under special circumstances; Sykes v. Hastings, 11. ib. 363; Sutton v. Jones, 15. ib. 584: but it is competent in the parties themselves to appoint such person if they think proper.

Acts of agent to be in the name of the principal.

(2) A person exercising a mere authority delegated to him, should regularly do all acts in the name of his principal; Combes Ca. 9 Co. 76. b.; 1 Roll. Ab. 330, F. 1.; Frontin v. Small, 2 Stra. 705.; 2 Ld. Raym. 1418, S. C.; but if done in his own name they will be good; Parker v. Kett. 1 Salk. 95.

APPOINTMENTS.

Receiver (of rents).

and from time to time in the name or names aforesaid or otherwise, to give receipts, acquittances (1), and other discharges for such rents, issues and profits, or any part thereof; and in case of the non-payment thereof, or of any part thereof, at or upon the days or times whereupon the same respectively shall be due and payable, into or upon all or any of the said messuages, lands, tenements and hereditaments, to enter, and there to distrain (2) for the same, and to dispose of the distress or distresses which shall be there taken according to due course of law; and also to take or use all and every such other remedies for recovering and obtaining payment of the same rents, issues and profits, or any part thereof, whether by action, suit or otherwise, as shall be thought necessary or expedient in that behalf; and also to give notice to any tenants or occupiers of the said hereditaments and premises or any of them to quit possession of the same; and on refusal or neglect so to do, eject them or any of them respectively therefrom, and also to demise or let the said hereditaments and premises from time to time as and when they shall by any means become untenanted for such rent or rents, and for such term or terms for years (not exceeding twenty-one years in possession) as he the said (*receiver*) shall think fit, and one or more attorney or attornies (3) under him the said (*receiver*) for all or any of the purposes aforesaid, from time to time to substitute or appoint, and to remove and displace at his will and pleasure; and generally to do, perform and execute all other matters and things requisite and proper in or concerning the premises aforesaid, as fully and effectually, to all intents and purposes, as he the said (*mortgagor*), his heirs or assigns could or might do, or have done in his or their own proper person or persons, if these presents, or the said in part recited indenture had not been made; he the said (*mortgagor*) hereby ratifying and allowing, and promising and agreeing to allow, ratify and confirm all and whatso-

To give acquittances.

Power to enter and distrain.

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(1) It does not seem to be essential that the receiver should be expressly authorized to give acquittances, for where there is a hand appointed to receive, his receipt will be a discharge.

Power to give receipts incident to a receiver.

(2) If the receiver be appointed by the Court, he may distrain without any express authority given him for that purpose, but it should seem he can have no such authority where he is appointed by the party, unless it be expressly given to him; Pitt v. Snowden, 3 Atk. 750.

Power to distrain.

(3) The foundation of authorities delegated to another, being a personal confidence reposed in the party, it cannot be transferred by him to a third person unless by consent of his principal; 1 Roll. Ab. 330, E. 1.; Combes Ca. 9 Co. 76. a.; Parker v. Kett, 1 Salk. 95.; or he be expressly empowered to do so.

Mere authorities not transferable.

APPOINTMENTS.
Receiver of rents

over the said (*receiver*) or his attorney or attornies shall lawfully do, or cause to be done in or concerning the said premises, under or by virtue of these presents. AND the said (*mortgagor*) doth hereby order and direct all and every the tenants and occupiers of the same messuages, lands, tenements and hereditaments, to pay unto the said (*receiver*) or his attorney, bailiff or agent, all and singular the rents, issues and profits thereof, as and when the same respectively shall from time to time become due and payable, under or by virtue of their respective leases or otherwise, and doth hereby declare that the receipt or receipts of him or them shall from time to time, and at all times, be good, effectual, and sufficient discharges for all such sums as shall be therein respectively acknowledged to have been received.

Direction to tenants to pay rents to receiver.

Receiver to stand possessed of the rents, &c.

AND it is hereby agreed and declared, by and between the said parties to these presents, that the said rents, issues and profits, when so received shall be had and holden by him the said (*receiver*) upon the trusts, and to and for the ends, intents, and purposes following, that is to say, IN TRUST, in the first place, to pay and discharge all such taxes, rates, assessments, and impositions, whether parliamentary or parochial, as for the time being shall be payable by the landlord of the said premises in respect thereof, and other necessary out-goings affecting the same (1); and in the next place to detain and satisfy all reasonable and necessary costs, charges and expences attending the receipt and payment of the said monies, together with all such sums as shall have been by him paid or expended, or which he shall deem proper to expend or pay in or for keeping the said premises in repair, or in or for insuring the same against fire, and also the clear yearly sum of £ as a salary (2) or remuneration to him the said (*receiver*) for his time and trouble in the execution of the trusts of these presents, for so long as he shall be continued a receiver for the

Upon trust after payment of taxes and expences.

And salary to receiver.

Receiver must apply monies agreeably to the trust.

(1) A receiver cannot apply the money in his hands for any other purposes than to answer the ends of his appointment, unless empowered to do so, or it be necessary for the preservation of the estate; Blunt v. Clithero, 6 Ves. 799; Attorney-Gen. v. Vigor, 11. ib. 563.; Waters v. Taylor, 15. ib. 26.

Salary may be allowed to receiver.

(2) A salary or poundage to a receiver is usual, and allowed by the court; White v. Lincoln, 8 Ves. 371.; Chambers v. Goldwin, 9 ib. 271.; Langstaffe v. Fenwicke, 10 ib. 405.; unless where he is trustee of the same estate, see *ante*, p. 340, n. (1), in which case he is not allowed any emolument; Sykes v. Hastings, 11 ib. 363.; unless it be expressly so agreed between the parties; nor where the mortgagee himself is appointed receiver; French v. Baron, 2 Atk. 120; and see Chambers v. Goodwin, 9 Ves. 271; Scott v. Brest, 2 Durnf. and E. 238.

APPOINTMENTS.

Receiver (of rents).

purposes aforesaid; AND then in the next place to pay and satisfy (1) all such sum and sums of money as for the time being shall be in arrear, and due to the said (*mortgagee*), his executors, administrators and assigns, for or in respect of interest for the said sum of £ after the rate of £5 for every £100 by the year, without any abatement or deduction whatever (save only and except the property tax, if any) payable in respect thereof for the time being, at and upon the days and times, and in the manner hereinbefore mentioned for payment thereof, and according to the true intent and meaning of the hereinbefore in part recited indenture; and from and after full payment and satisfaction thereof, THEN UPON FURTHER TRUST to render and pay all the residue and surplus, if any, of the rents, issues and profits, of the said hereditaments which shall from time to time remain after answering the purposes aforesaid, unto the said (*mortgagor*), his heirs and assigns, to and for his and their own proper use and benefit (2), or otherwise as he or they shall direct or appoint in that behalf (3). AND the said (*mortgagor*) for himself, his heirs,

To keep down interest of mortgage.

Surplus to mortgagor.

Mortgagor not

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(1) If the receiver be appointed for the purpose of securing the payment of an annuity, say,

Annuity.

"And then and in the next place to pay and satisfy unto the said (*grantee*), his executors, administrators and assigns, the said annuity, yearly rent-charge or annual sum of £ , so secured to be paid to him the said (*grantee*), his executors, administrators and assigns, during the life of the said (*grantor*) [*or as the case may be*] when and as the same shall become due and payable, and upon the days and times, &c." *as above.*

(2) Receivers are, by order of Court, required to pass their accounts and pay over the balance at least once a year, and in case of default will be liable to interest after the rate of 5 per cent. until payment. See ——— v. Jolland, 8 Ves. 72; Potts v. Leighton, 15 ib. 274; and be disallowed their poundage, D. of Newcastle v. Kinderley, 8 ib. 371.

Receivers must pass their accounts once a year.

(3) If any part of the mortgaged premises be in the personal occupation of the mortgagor, a power of entry, &c. upon such part of the premises may here be added,

Where receiver to enter in case of default,

"AND FURTHER, that in case default shall happen to be made in payment of the said principal sum of , at the time in or by the said in part recited indenture appointed for payment thereof, or of the interest of the said sum, or any part thereof, during such time as the said principal sum of £ , or any part thereof, shall remain upon the security of the said premises, by the space of three calendar months next after either of the days therein and hereinbefore mentioned for payment thereof, it shall be lawful for the said (*re-*

APPOINTMENTS.
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executors and administrators, doth covenant, promise and agree with and to the said (*mortgagee*), his executors, administrators and assigns, by these presents in manner following, that is to say, that he the said (*mortgagor*), his heirs or assigns, shall not, nor will without the consent of the said (*mortgagee*), his executors, administrators or assigns, first had and obtained in writing under his or their hand or hands, revoke (1), make void, frustrate, or in any manner impede the execution of all or any of the powers or authorities hereby given, or intended to be given to the said (*receiver*); nor do, commit or knowingly suffer any act, deed, matter or thing whatsoever, whereby or by means whereof the same or any of them shall or may become void or ineffectual, or whereby the said (*receiver*) or any future receiver to be appointed as hereinafter is mentioned, shall or may be hindered, obstructed or impeded, in collecting, receiving or recovering, or in paying and applying upon the trusts, and in the manner aforesaid, the rents, issues and profits of the said premises, or any of them, or any part thereof; but shall and will from time to time, and at all times, at and upon the reasonable request of the said (*mortgagee*), his executors, administrators or assigns, but at the proper costs and expence of the said (*mortgagor*), his heirs or assigns, make, do, execute and perfect, or cause and procure to be made, done, executed and perfected, all and every such further and other lawful and reasonable acts, deeds and assurances in the law whatsoever, for the further, better and more effectually and satisfactorily authorising, empowering and facilitating all and every such receivers, to receive

to defeat the appointment,

nor obstruct receiver.

Further assurance.

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ceiver), his attorney or agent lawfully authorized, immediately, or at any time thereafter, to enter into and upon such of the said messuages, lands, tenements and hereditaments aforesaid, as shall or may happen to be in the tenure or occupation of the said (*mortgagor*), his heirs or assigns, and not be in lease or let to tenants, and to distrain thereupon for all arrears of interest which shall be due from time to time on the said principal sum of £ , in such and the same manner as he the said (*receiver*) might or could by virtue of these presents distrain upon any of the tenants of the said (*mortgagor*) for rent in arrear."

and distrain upon premises.

Authorities created for security of a debt not revocable.

(1) A declaration on the part of the appointor that he will not revoke his appointment, is usually inserted, on the principle that authorities being founded on confidence are revocable at pleasure, but where such an appointment is made for the security of a debt, it should seem not to be revocable without consent See Walsh v. Whitcomb, 2 Esp. 565; Bromley v. Holland, 7 Ves. 28

APPOINTMENTS.
Receiver (of rents).

the rents, issues and profits of the said messuages, lands, tenements and hereditaments, upon the trusts, and to and for the ends, intents and purposes aforesaid, as by the said (*mortgagee*), his executors, administrators or assigns, or his or their counsel in the law, shall be reasonably advised and required. AND FURTHER, that in case the said (*receiver*) or any future receiver to be appointed in pursuance hereof, shall happen to depart this life, or be about to reside abroad, or otherwise become incapable of acting, or shall refuse or neglect to act or misconduct himself in the opinion of the said (*mortgagee*), his executors, administrators or assigns, in the execution of the trusts or powers hereby in him reposed or vested (1) before the said sum of £ and interest shall be fully paid and satisfied, then and in any of such case or cases, and as often as any such event shall happen, he the said (*mortgagor*), his heirs or assigns, shall and will upon the request of the said (*mortgagee*), his executors, administrators or assigns, nominate and appoint, or join and concur in nominating and appointing, such other fit person in the place or stead of him the said (*receiver*) for the purposes aforesaid, as he the said (*mortgagee*), his executors, administrators or assigns, shall name or approve (2).

If receiver die, &c. another to be appointed by mortgagor.

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(1) If the receiver be appointed for securing the payment of an annuity, say, Annuity.

"During the continuance of the said annuity, yearly rent-charge, or annual sum of £ , or any arrears thereof, then and in such case, &c." *as above.*

(2) As the estates mortgaged are in general of much greater value than the money lent upon them, it is usual to leave to the mortgagor the power of appointing a receiver; but if there be any suspicion of fraud on the part of the mortgagor, or of collusion between him and the receiver to be appointed, this power may be given to the mortgagee himself, or the following proviso may be added to that inserted above: Usual to allow mortgagor to name receiver.

"AND FURTHER, that in case of any such death, incapacity or misconduct as aforesaid, and the said (*mortgagor*), his heirs or assigns, shall refuse or neglect to appoint, or concur in appointing another fit person in his place or stead, for the space of three calendar months next after request shall have been made to him in writing by the said (*mortgagee*), his executors, administrators or assigns, for that purpose, then in and such case, and as often as the same shall happen, it shall be lawful for him the said (*mortgagee*), his executors, administrators and assigns, without the consent or concurrence of the said (*mortgagor*), his heirs or assigns, to constitute and appoint any other fit person to be a receiver of the said rents, issues If receiver neglect to act, mortgagee may appoint another.

APPOINTMENTS.

Receiver (of rents).

Mortgagor to receive rents until default.

PROVIDED ALWAYS (1) nevertheless, and it is hereby declared and agreed by and between the said parties to these presents, that until the interest of the said sum of £ after the rate aforesaid, or of so much thereof as for the time being shall remain due upon the said in part recited securities, shall be in arrear and unpaid for the space of days next after the same shall have become due by virtue of the said in part recited indenture, all and singular the rents, issues and profits of the said messuages, lands, tenements and hereditaments, shall and may be had and retained by the said (*mortgagor*), his heirs and assigns, to and for his and their own proper use and benefit, without any intervention or interference of the said (*receiver*) or any future receiver to be appointed as aforesaid, any thing hereinbefore contained or implied to the contrary thereof in anywise notwithstanding.

Covenant by receiver duly to account.

AND the said (*receiver*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said (*mortgagor*) and (*mortgagee*) and each of them, their, and each of their executors, administrators and assigns, in the manner following (that is to say), that he the said (*receiver*) from time to time, so long as he shall be the receiver of the rents and profits of the said messuages, lands, tenements and hereditaments, or any of them under or by virtue of these presents, shall and will use his utmost endeavours to collect in and receive the rents, issues and profits of the said hereditaments and premises, and well and truly pay, apply, and dispose of the same in manner, and to and for the ends, intents

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and profits, to and for the intents and purposes aforesaid, with such salary or emolument as he the said (*mortgagee*), his heirs or assigns, shall think fit, not exceeding the sum of one shilling in the pound upon the gross or annual value of the said premises; all and every of which said new or future receivers to be appointed in either of the cases aforesaid, shall have, and he and they is and are hereby invested with such and the same powers and authorities and privileges, and all allowances in all respects as if his or their name or names respectively had been inserted in these presents, instead of the name of him the said (*receiver*)."

Annuity.

(1) This proviso is proper in the case of a mortgage, as corresponding with the clause in the mortgage deed, authorizing the mortgagor to receive the rents and profits till default; but in the case of an annuity it may frequently be expedient that it should be omitted, particularly where the rents and profits are barely sufficient to keep down the annuity, or where the land on which it is secured is under settlement, or limited on trust, for other purposes.

APPOINTMENTS.

Receiver.

and purposes hereinbefore expressed concerning the same, and according to the true intent and meaning of these presents. PROVIDED ALSO, and it has been further agreed, and it is hereby declared, that the said (*mortgagee*), his heirs, executors, administrators or assigns, shall not in anywise be charged or chargeable with, or answerable for any loss, misapplication or nonapplication, of all or any part of the rents, issues and profits of the said premises, or of any part thereof, by the said (*receiver*), his attornies or agents, or any other receiver or receivers to be appointed under or in pursuance of these presents, whether he or they shall be so appointed by the said (*mortgagor*), his heirs or assigns, or by the said (*mortgagee*), his executors, administrators or assigns, or otherwise howsoever; but the sum, if any, as also the salary to be paid to the said receiver, shall be wholly borne and paid by the said (*mortgagor*), his heirs or assigns. AND MOREOVER (1) that he the said (*mortgagee*), his heirs, executors, administrators or assigns, shall not by reason hereof, or of any matter or thing herein contained, be considered or construed to be in the actual or virtual possession of all or any of the messuages, lands, tenements and hereditaments, comprised in the said in part recited indenture, nor be accountable for all or any part of the rents, issues or profits thereof, or of any part thereof, or otherwise in relation to the same premises, nor shall any thing herein contained, nor any power hereby or intended to be hereby given, prevent or preclude the said (*mortgagee*) his heirs, executors, administrators or assigns, from calling in and recovering payment of the said sum of £ and interest, or from adopting and pursuing all or any such means and expedients at law or in equity for that purpose, or for obtaining possession of the said premises, as he the said (*mortgagee*), his heirs, executors, administrators or assigns shall think fit according to the true intent and meaning, or legal effect of the hereinbefore in part recited indenture of release, and the rules of law and equity applicable thereto. PROVIDED LASTLY, and it is hereby declared and agreed, that the said (*receiver*), or any future receiver or receivers to be appointed in pur-

Mortgagee not to be answerable for acts of receiver.

Nor be considered to be in possession.

Receiver not to be answerable for involuntary losses.

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(1) As the act of an agent is in most cases deemed the act of the principal, see Doe and Willis v. Martin, 4 Durnf. and E. 39, this clause is generally inserted to prevent the entry of the receiver to perform the trusts of his appointment, being construed to be the entry of the mortgagee for breach of the condition on the part of the mortgagor; but as the preceding trusts would preclude this presumption, it is not necessary. And if the receiver be appointed for securing the payment of an annuity, it is irrelevant, and should be omitted.

Entry of receiver not entry of mortgagee.

Annuity.

APPOINTMENTS.
Receiver.

suance of these presents, shall not be answerable (1) or accountable for any loss, damage or misfortune, which shall or may happen to the said rents, issues and profits, or any part thereof, or the said messuages, lands, tenements and hereditaments, in any way whatsoever, without his or their wilful default or neglect. IN WITNESS, &c.

Receiver not liable beyond his wilful default.

(1) The declaration that the receiver shall be answerable only for his wilful negligence or default, is inserted rather as a matter of satisfaction to the receiver than of necessity; for although no provision be made for his indemnity, he will not be liable for accidental losses. See Knight v. Ld. Plymouth, 3 Atk. 480; 1 Dick. 120; Rough v. Howell, 3 Ves. 566; but otherwise if he be guilty of gross negligence, ib, or risk the money on his own account, Wren v. Kirton, 11. ib. 377.

No. CVI.

*An *Appointment of a* Steward (1) *of a Manor or Manors.*
Variation where it is a *Land* Steward.

KNOW ALL MEN BY THESE PRESENTS, that I (*lord* or *lady*) of, &c. have given and granted, and by these presents do give and grant unto (*steward*) of, &c. gentlemen, the office of steward of my manor of , in the county of . AND I have constituted and appointed, and by these presents do constitute and appoint him the said (*steward*), steward of the said manor [or *manors* and every of them] to keep and hold all courts, belonging to the said manor [or *manors* or any of them] at the usual times the same have been accustomably holden; to have, hold, and enjoy the said office of steward, and to take and receive all and singular the fees and profits thereto belonging, by him the said (*steward*), or his sufficient deputy for and during my will and pleasure (2). IN WITNESS WHEREOF, I the said (*lord*) have hereunto set my hand and seal, the day of [in the year of the reign of his Majesty George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord, 182 .]

Signed, sealed, and delivered (being first duly stamped), in the presence of }

(1) See the appointment of a *deputy* steward, *ante*, No. XCIV. p. 302. Deputy.
(2) If the appointment be of a *Land Steward* to superintend the farming and managing the estates of the principal, see *ante* No. VIII. p. 54. also No. LXXXI. p. 267. *et seq.* in the margin—and add the clauses there for directing repairs, felling timber, allowing taxes, receiving rents, distraining, &c. Land Steward.

APPOINTMENTS.

New Trustees (Freeholds).

No. CVII.

Appointment of New Trustees *of Estates of* Inheritance *in the room of Old Trustees, deceased or resigning.*

Variations where one or more new trustees are appointed to act in conjunction with one or more of the old trustees.—Where the subsisting limitations are uses, and where they are trusts.—Where the premises, or part, are copyhold.—Where the appointment is by indorsement on the trust deed.

THIS INDENTURE (1) of parts, made the day of , in the year of the reign, &c. and in the Year of our Lord

Parties. BETWEEN (*the old trustees*) of, &c. (2) of the first part, (*the husband and wife, or other cestui qui trust*) of, &c. of the second part, and (*the new trustees*) of, &c. of the third part (3). WHEREAS

Appointment of new trustees should be by indenture.

(1) An appointment of new trustees is frequently by deed poll, but it seems more proper that it should be by indenture, which, being the words of all parties, will amount to an agreement on the part of the new trustees, to stand possessed of the property upon the trusts declared, and there is a still greater degree of propriety in this where it is a partial change only of trustees, and a covenant is inserted (as there should be) that the resigning trustee has not encumbered; a covenant will, however, be binding on the covenantor, although by deed poll, if the covenantee be named in the deed; 1 Roll. Ab. 517. F. N. B. 145. Green v. Horne, 1 Salk. 197.

Infant.

If the surviving trustee be an infant, application must be made to the Court of Chancery; and see Alison v. Pomfret, 2 Cox, 221.

Indorsement.

(2) If the deed of appointment be by indorsement, say, "the within named," instead of describing the parties.

Partial change of trustees.

(3) When the settled estate is freehold, and one or more trustees are appointed to act in conjunction with a continuing trustee, the mode usually adopted is to convey the estate to the new trustee, to the use of such new trustee and the former trustee, in order that they may take a joint estate in the property for the purposes of the settlement. See 1 Hornm. Prec. 210, 211. 213; and 1 Saund. Us. [132] also 3 Elem. Conv. 2d Ed. p. 416, and where the limitations in the settlements are to the

APPOINTMENTS.

New Trustees (Freeholds).

the marriage mentioned in the within written Indenture, as then intended to be shortly had, was soon afterwards had and solemnized (1) and by indentures of lease and release, bearing date respectively the and days of , which was in the year , the release being of parts, and made, or expressed to be made between, &c. and purporting to be a settlement made previously to a marriage then in contemplation, and which soon afterwards took effect between the said (*husband and wife*), certain freehold (2) lands and hereditaments therein particularly described, were conveyed and assured to the use (3) of the said (*old trustees*) and their heirs, upon the trusts therein declared concerning the same. AND WHEREAS it was by the said indenture of release provided, agreed, and declared by and between the parties thereto, that in case the said (*old trustees*), or any

Recital of marriage settlement, and power to appoint new trustees.

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use of the *trustees*, IN TRUST for the persons beneficially interested, this mode is free from objection; but where the limitations are to the *use* of the *parties beneficially interested*, as, to the *use* of the husband for life, &c. such use, together with all the subsequent uses, it might be contended, would, by a previous limitation of an use to the trustees, be converted into trusts. See Tyrrel's Ca. Dyer, 155, a. and Cox v. Chamberlain, 4 Ves. 685; *sed quære*. And independently of this, where the limitation is framed in the manner just mentioned, the trustees take in different modes, i. e. the new trustees at the common law, and the continuing trustees, as to their new estate, by the statute of uses; hence the estate is usually, in either case, conveyed by the continuing or surviving trustees to some third person, to be by him conveyed to the old and new trustees, to the uses of the settlement, by which means they will all take the same joint-seisin in the estates as they would have taken had they been originally appointed by the settlement itself. In which case add,

"And A. B. of, &c. a person named and appointed by and on the behalf of the said (*continuing trustees*) for the purposes hereinafter mentioned of the fourth part."

(1) If the appointment be by indorsement, the recital of the instrument upon which it is indorsed may be wholly omitted. Indorsement.

(2) If part of the estates be copyhold, say,

"Certain freehold and copyhold lands and hereditaments therein particularly described, were respectively conveyed and covenanted to be surrendered to the use of the said (*old trustees*) and their heirs, upon the trusts therein declared concerning the same." Copyholds.

(3) If the limitations were to the use of the persons beneficially interested, say, Use of persons beneficially interested.

"Were conveyed and assured unto the said (*old trustees*) and their heirs, to the uses, and upon the trusts therein declared concerning the same."

APPOINTMENTS.

New Trustees (Freeholds).

or either of them, or any succeeding trustees or trustee to be appointed in pursuance thereof, should die, or be desirous to quit and be discharged from the trusts thereby in them reposed, or to be about to reside abroad, or otherwise become incapable or unfit to perform the said trusts, at any time before the same should be fully executed and performed, it should be lawful for the said (*husband and wife*) during their joint lives, or the survivor of them after the decease of either of them, or other the person or persons who for the time being should be entitled to the immediate freehold of the said lands and hereditaments, under or by virtue of the limitations in the said indenture of settlement contained (if such person or persons should be of the age of 16 years, but if not, or in any case of the refusal or neglect, for one calendar month, of any such person or persons, after he, she or they should be requested by any or either of the acting trustees, or only acting trustee for the time being, then for them the said trustees, or the only acting trustee for the time being, or the heirs of the last acting trustee, by any deed or writing under their, his, or her hands and seals, or hand and seal, to be attested by two or more credible witnesses), to nominate, substitute, and appoint any other person or persons to be a trustee or trustees for the purposes therein mentioned, in the place or stead of such of the said trustees as should so die, be desirous to quit or be discharged from the said trusts, or be about to reside abroad, or otherwise become incapable or unfit to act in the same; and that when and as often as any new trustee or trustees should be so nominated or appointed, the said trust premises should with all convenient speed be conveyed and assured, so and in such manner as that the same should and might be legally and effectually vested in such new trustee and trustees, either solely or jointly with the surviving or continuing trustee or trustees, as the case might require; and that every such new trustee should and might act in the execution of the said trusts, as fully and effectually, in all respects, as if he had been first or originally nominated or appointed such trustee. AND WHEREAS the said (*old trustees*) (1) are desirous

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Partial change of trustees.

(1) If only one new trustee be appointed in the room of a deceased trustee, say,

"AND WHEREAS the said (*deceased trustee*) hath since departed this life. AND WHEREAS the said (*new trustee*) hath been chosen a trustee of the said settlement, in the room or stead of the said (*deceased trustee*), and hath consented to take upon himself the execution of the trusts thereof. NOW THIS INDENTURE WITNESSETH, &c. *as above.*

APPOINTMENTS.
New Trustees (Freeholds).

of resigning, and being discharged from the trusts reposed in them by the hereinbefore in part recited indenture [*or as the case may be*]. AND WHEREAS (1) the said (*new trustees*) at the request of the said (*husband and wife*) have consented to become trustees, and to take upon themselves the execution of the trusts of the said settlement, in the place and stead of the said (*old trustees*). NOW THIS INDENTURE WITNESSETH, that by virtue and in execution of the power and authority given or reserved to them the said (*husband and wife*) for that purpose by the hereinbefore in part recited indenture of release, THEY, the said (*husband and wife*), HAVE nominated, substituted and appointed, and by this present deed or writing under their respective hands and seals, and attested by the two credible persons whose names are or are intended to be hereupon indorsed as witnesses attesting the same, Do nominate, substitute, and appoint the said (*new*

WITNESS. Appointment of new trustees.

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(1) If the appointment be by the survivor of the husband and wife, say,

Appointment by survivor of husband and wife.

"AND WHEREAS the said [*husband or wife, as the case may be*] hath since departed this life. AND WHEREAS the said (*wife*) hath requested the said (*new trustees*) to take upon themselves the execution of the trusts of the said settlement, in the place and stead of the said (*deceased or resigning trustees*) which they have consented to do. NOW THIS INDENTURE WITNESSETH, that by virtue and execution of the power and authority given or reserved to the said (*wife*) for that purpose, by the hereinbefore in part recited indenture, SHE, the said (*wife*), HATH nominated, &c." *as above.*

If the appointment be by the surviving trustees, say,

Appointment by surviving trustees.

"AND WHEREAS the said (*deceased trustees*) have since departed this life, leaving the said (*surviving trustees*) them surviving. AND WHEREAS the said (*husband and wife*) have also since departed this life. AND WHEREAS the persons entitled to the immediate freehold of the said lands and hereditaments under the limitations contained in the hereinbefore in part recited settlement, are under the age of 16 years. AND WHEREAS the said (*surviving trustees*) have requested the said (*new trustees*) to become trustees of the said settlement in the room and stead of the said (*deceased trustees*), which they have consented to do. NOW THIS INDENTURE WITNESSETH, that by virtue and in execution of the power and authority given to the said (*surviving trustees*) for that purpose, by the hereinbefore in part recited indenture of settlement, THEY, the said (*surviving trustees*), HAVE nominated, &c." *as above.*

APPOINTMENTS.
New Trustees (Freeholds).

trustees) (1) to be trustees in the room, place, and stead of them the said (*old trustees*), and to act in and execute the several trusts so reposed in them the said (*old trustees*), in and by the said in part recited indenture of release or settlement as aforesaid, or such of the said trusts as are still in being, and capable of taking effect. AND

FURTHER WITNESS.
Old trustees release.

THIS INDENTURE FURTHER WITNESSETH, that for the purpose of vesting the said lands and hereditaments in the said (*new trustees*) (2) in pursuance and for the purposes of the said in part recited indenture of release or settlement, and for and in consideration of the sum of 5*s.* of lawful English money, to them the said (*old trustees*) in hand well and truly paid by the said (*new trustees*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, THEY, the said (*old trustees*), at the request, and by the direction and appointment of the said (*husband and wife*), testified by their being parties to, and sealing and delivering these presents, HAVE, and each of them HATH bargained, sold, and released, and relinquished, and quitted claim, and by these presents Do, and each of them DOTH, bargain, sell, and release, and relinquish and quit claim, and by way of conveyance only (3), and not for or by way of warranty of title, Do, and each of them DOTH, grant and confirm

Parcels.

unto the said (*new trustees*) and their heirs, ALL, &c. (4) being the

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Partial change of trustees.

(1) If the appointment be of one or more new trustees, say,

"Do nominate, substitute, and appoint the said (*new trustee*) to be a new trustee in the room, place, or stead of the said (*deceased trustee*), and to act in and execute, in conjunction with the said (*surviving trustees*), the several trusts so reposed in them the said (*deceased and surviving trustees*), in and by the said in part recited indenture, &c." *as above.*

Partial change of trustees.

(2) If the appointment be of one or more new trustees, say,

"For the purpose of vesting the said lands and hereditaments in the said (*new trustee*) jointly with the said (*continuing trustees*), in pursuance, &c." *as above.*

(3) See *ante* MOD. PREC. Vol. II. p. 125, n. (2).

Parcels.

(4) Here describe the premises intended to be conveyed to the new trustees, by their ancient and present name, situation, &c.

Indorsement.

If the conveyance be by indorsement, and there be no variation in the description of the parcels since their conveyance to the old trustees, they may be omitted, and say,

"ALL and singular the messuages, lands, tenements, and hereditaments in the within written indenture of release described, and thereby granted or released, or otherwise conveyed or assured unto or vested in them the said (*old trustees*), &c." *as above, with all, &c.*

APPOINTMENTS.

New Trustees (Freeholds).

same messuages or tenements, lands and hereditaments which in or by the hereinbefore in part recited indenture of release or settlement of the day of , were conveyed or assured unto them the said (*old trustees*), as aforesaid, or mentioned or intended so to be, and all other the messuages, lands, tenements, and hereditaments of, in, or to which they the said (*old trustees*), are under or by virtue of the said in part recited indenture of release, seised or entitled at law or in equity, or which are legally or equitably subject to the uses, trusts, powers, provisoes, declarations, and agreements contained in the said indenture of settlement; together with all houses (1), out-houses, buildings, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, water-courses, and all manner of other rights, privileges, easements, advantages, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same, or any of them now or heretofore holden, used, occupied, or enjoyed (all which said messuages, lands, tenements, and hereditaments are now in the actual possession of, or legally vested in them the said (*new trustees*), by virtue of a bargain and sale to them thereof made by the said (*old trustees*) for five shillings' consideration, by indenture bearing date on the day next before, and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders of and in the said hereditaments and premises, and every of them respectively, and the rents, issues, profits, and proceeds to arise or become payable for or in respect of the same, or of any part thereof; and all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of them the said (*old trustees*), in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof; TO HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or in-

General words.

Reference to bargain and sale for a year.

To hold to the new trustees.

(1) These general words should be made to correspond with the property intended to be conveyed; and also with those in the conveyance recited.

General words.

APPOINTMENTS.

New Trustees (Freeholds).

tended so to be, with their and every of their rights, members, appendages, and appurtenances (1) unto (2) and to the use (3) of the said *new trustees*), (4) and their heirs, for all such estate and in-

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Copyholds.

(1) If part of the settled premises be copyhold, and they have been previously surrendered to the use of the new trustees, say,

"Unto the said (*new trustees*), and their heirs, but to the uses nevertheless, and upon and for such and the same trusts, intents, and purposes as are hereinafter expressed concerning the same. AND WHEREAS such of the said lands and hereditaments comprised in the said hereinbefore in part recited indenture as are therein mentioned to be copyhold, and holden of the manor of , have, previously to the execution of these presents, been surrendered by the said (*old trustees*) to the use of them the said (*new trustees*) and their heirs. NOW THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed by and between the said parties hereto, that they the said (*new trustees*), and the survivors and survivor of them, and the heirs of such survivor, and their and his assigns, shall stand and be seised of the said freehold and copyhold messuages, lands, and hereditaments hereinbefore released, and mentioned to have been surrendered respectively, to and for such and the same uses, and upon and for such and the same trusts, intents, and purposes, &c." *as above.*

Limitations to the *use* of persons beneficially interested.

(2) Where the limitations in the settlement are to the *use* of, and not in trust for, the persons beneficially entrusted, say,

"Unto the said (*new trustees*) and their heirs, for all such estates and interest as they the said (*old trustees*) respectively now have, or either of them hath therein, under or by virtue of the said in part recited settlement, and to and for such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, &c." *as above.*

Partial change of trustees.

(3) If the limitations in the settlement be to the *use* of the trustees, and there be one or more new trustees appointed, say,

"Unto the said (*new trustee*), and his heirs, TO THE USE of the said (*continuing trustees*) and (*new trustee*) and their heirs, upon such trusts, and for such and the same intents and purposes, &c." *as above.*

Estate vested in third person.

(4) If there be one or more new trustees appointed, and if it be necessary for the reasons before mentioned, see *ante*, p. 350, n. (3) that the premises should be vested in a third person to be by him conveyed to the old and new trustees, say,

"UNTO and to the USE of the said A. B. and his heirs, BUT

APPOINTMENT.

New Trustees (Freeholds).

terest as they the said (*old trustees*) respectively now have, or either of them hath therein, under or by virtue of the said in part recited settlement, and upon and for such and the same trusts, intents, and purposes, and under and subject to such and the same powers of sale and exchange, and other powers and provisions as are contained, expressed, or declared of or concerning the same hereditaments and premises in and by the said in part recited indenture of release, or such and so many of them as are now subsisting, or capable of taking effect, so and in such manner, to and for the end, intent and purpose that they the said (*new trustees*), and the survivors and survivor of them, and the heirs of such survivor, and their and his assigns, may be enabled to perform and execute all and every the same trusts, and exercise all and every the same powers and authorities, in like manner in all things as if the names of the said (*new trustees*) had been inserted in the said indenture of settlement instead of the names of them the said (*old trustees*), and to, for, and upon no other use, trust, intent, or purpose whatsoever. And they the said (*old trustees*), for themselves severally and respectively (1), and for their several and respective heirs, executors,

Upon trusts contained in the settlement.

Covenant by the old trustees that they have done

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nevertheless UPON TRUST, and to the end and intent that he the said A. B. and his heirs shall and do forthwith, and immediately after the sealing and delivery hereof, by indentures of lease and release already prepared and engrossed, and indorsed on these presents, the lease bearing date the day next before the day of the date of the release, and the release bearing, or intended to bear date the day next after the day of the date of these presents, convey and assure all and singular the lands, tenements, and hereditaments hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, and all the estate, right, title, and interest of him the said A. B. therein, unto the said (*continuing and newly appointed trustees*) their heirs and assigns, so, and in such manner as that the same may be well and effectually vested in them to and for such and the same uses, and upon such and the same trusts, and for such and the same intents and purposes, and under and subject to such and the same powers of sale and exchange, and other powers, provisoes, declarations, and agreements as are contained, expressed, and declared of or concerning the same hereditaments and premises in and by the hereinbefore in part recited indenture of release, or such and so many of them as are now subsisting and capable of taking effect."

(1) See a more distinct form of a covenant by trustees that they have not encumbered,—*ante* MOD. PREC. Vol. II. No. XL. p. 216, n. (1).

APPOINTMENT.

New Trustees (Freeholds).

no act to encumber.

and administrators, but not the one for the other of them or the heirs, executors, or administrators, or the acts, deeds, omissions, or defaults of the other of them, but each for himself only, and his own heirs, executors and administrators, and his and their own acts, deeds, and defaults, do, and each of them doth hereby covenant, declare, and agree with and to the said (*new trustees*), their heirs and assigns, that they the said (*old trustees*) have not, nor hath either of them, each covenanting separately as aforesaid, at any time heretofore, either together or separately, made, done, committed, executed, or knowingly occasioned, suffered, or omitted, nor been parties or privies, or party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said messuages, lands, tenements, hereditaments, and premises hereby released, or mentioned or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, encumbered, or prejudicially affected in any manner howsoever, or whereby they the said (*old trustees*) are in anywise prevented from releasing, conveying, and assuring the messuages, lands, tenements, and hereditaments, or any part thereof, unto the said (*new trustees*) and their heirs, in the manner aforesaid, and according to the true intent and meaning of these presents (1). IN WITNESS, &c.

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(1) If the resigning trustees require an acquittance on their relinquishment of the trusts, this may be given by a further witness, as follows:

Release and acquittance by cestuis qui trust to the resigning trustees.

"AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, they the said (*husband and wife*) do hereby respectively release, acquit, and for ever discharge the said (*old trustees*), their respective heirs, executors, and administrators henceforth and for ever, of and from all and every the trusts, powers, provisoes, declarations and agreements, in the said hereinbefore in part recited indenture contained, by or on the part of them the said (*old trustees*) or any or either of them, their or any or either of their heirs, executors, or administrators, to be performed or executed, and also of and from all and all manner of actions, suits, causes of actions, and suits, debts, accounts, reckonings, claims, and demands whatsoever, at law or in equity, which they the said (*husband and wife*), or either of them, or the heirs, executors, or administrators of either of them, could or might have claim or demand against, upon, or from them the said (*old trustees*) or any or either of them, or their or either of their heirs, executors, or administrators, for, or

on account of any monies which may have come to their or either of their hands in the execution of the trusts aforesaid, or for or on account of any payments or disbursements by them, or any or either of them, made of the said trust monies, or by reason or in consideration of any other act, transaction, matter, or thing whatsoever, at any time heretofore done or omitted by them, or any or either of them, in anywise relating to the trusts in or by the hereinbefore in part recited indenture reposed or vested in them as aforesaid." IN WITNESS, &c.

APPOINTMENTS.

New Trustees (Freeholds).

The Reconveyance *of* Freehold *Property from A. B. to the Old and New Trustees, to be indorsed on the preceding deed* (1).

Parties.

THIS INDENTURE, of two parts, made the day of (2), in the year of our Lord , BETWEEN the within named A. B. of the one part, and the within named (*continuing trustees*) and (*new trustees*) of the other part, WITNESSETH, that in performance and execution of the trusts in the said A. B. reposed by the within written indenture, and in consideration of the sum of 5*s.* of lawful English money to him in hand paid by the said (*continuing and new trustees*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, HE the said A. B. HATH bargained, sold, and released, and by these presents DOTH bargain, sell, and release, and by way of conveyance only, and not for or by way of warranty of title, DOTH grant and confirm unto the said (*continuing and new trustees*), and their heirs, ALL and singular the messuages, lands, tenements, and hereditaments, and other the premises in the within written indenture described, and thereby conveyed or otherwise assured unto and to the use of the said A. B. and his heirs, or mentioned or intended so to be, with their and every of their rights, members and appurtenances (all which said messuages, lands, tenements and hereditaments are now in the actual possession of or legally vested in the said (*continuing and new trustees*), and their heirs, by virtue of a bargain and sale for a year, to them thereof made by the said A. B. for 5*s.* consideration, by indenture, bearing date the day next before the date of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute made for transferring uses into possession); and the reversion and reversions, and remainder and remainders, rents, issues, and profits of the same premises, and all the estate, right, title, and interest, claim and demand whatsoever, both at law and in equity, of him the said A. B. in, to, or concerning the same; TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and premises hereinbefore described or referred to, and by these presents granted and released, or mentioned or in-

WITNESS. That A. B. conveys and releases.

Parcels.

Reference to bargain and sale for a year.

To hold to the old and new trustees to the uses of the settlement.

(1) See *ante*, p. 350. n. (3).

Date of indorsed re-conveyance.

(2) This deed should bear date the day next after, and be executed subsequently to the preceding conveyance, in order that the bargain and sale for a year (which in practice invariably bears date the day next before the release), may not be prior in date to the time when the estate was vested in the bargainor.

APPOINTMENTS.
New Trustees (Freeholds).

tended so to be as aforesaid, with their and every of their rights, members, and appurtenances unto the said (*continuing and new trustees*) and their heirs, but nevertheless to and for such and the same uses, upon such and the same trusts, and to and for such and the same ends, intents and purposes, and under and subject to such and the same powers of sale and exchange, and other powers, provisoes, declarations, and agreements as are contained, expressed, or declared of or concerning the same hereditaments and premises in and by the within in part recited indenture of release, or such and so many of them as are now subsisting and capable of taking effect, to and for the said end, intent, and purpose that they the said (*continuing and new trustees*), and the survivors and survivor of them, and the heirs of the survivor, and their and his assigns, may be enabled to perform and execute all and every the same trusts, and exercise all and every the same powers and authorities in like manner in all things as if the names of the said (*new trustees*) had been inserted in the said indenture of settlement instead of the names of the said (*deceased or resigning trustees*), and to, for, and upon no other use, trust, intent, or purpose whatsoever. IN WITNESS, &c.

APPOINTMENTS.

New Trustees (Leaseholds).

No. CVIII.

Appointment of New Trustees *of* Leasehold *Property in the room of Old Trustees deceased or resigning.*

Variations where one or more new trustees are appointed to act in conjunction with one or more of the old trustees. Where the appointment is by Indorsement on the trust deed. Where the appointment is of Executors.

THIS INDENTURE (1) of parts, made the day of , in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN (*the old trustees*) of, &c. (2), of the first part (*the husband and wife, or other celles qui trust*), of, &c. of the second part, and (*the new trustees*), of, &c. of the third part (3). WHEREAS (4), by indenture of assignment, bearing date the day of , which was in the year , and made or expressed to be made between &c. and purporting to be a settlement made previously to a marriage then in contemplation, and which afterwards took effect between the said (*husband and wife*), certain leasehold messuages or tenements and premises, therein particularly described, were assigned unto the said (*old trustees*), their executors, administrators, and assigns, for the residue of the several terms of years then to come therein, upon the trusts therein declared concerning the same. AND WHEREAS,

Recital of marriage settlement.

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(1) See notes to No. CVII. *ante*, p. 350.

Indorsement.

(2) If the deed of appointment be by indorsement, say, "the within named," instead of describing the parties.

Partial change of trustees.

(3) If the appointment be of one or more trustees in the room of deceased or resigning trustees, see *ante*, p. 350, n. (3), and add,

"And A. B. of, &c., a person named and appointed by and on the behalf of the said (*continuing trustees*) for the purposes hereinafter mentioned, of the fourth part."

Indorsement.

(4) If the appointment be by indorsement, the recital of the settlement may of course be omitted.

APPOINTMENTS.
New Trustees (Leasehold).

&c. (1). AND WHEREAS (2) the said (*old trustees*) are desirous of resigning and being discharged from the trusts reposed in them by the hereinbefore in part recited indenture [*or as the case may be*]. AND WHEREAS (3) the said (*husband and wife*) have requested the said (*new trustees*) to become trustees, and to take upon themselves the execution of the trusts of the said settlement, in the room of the said (*old trustees*), which they have consented to do. NOW THIS INDENTURE WITNESSETH, that by virtue and execution of the power and authority given or reserved to the said (*husband and wife*) for that purpose by the hereinbefore in part recited indenture, THEY the said (*husband and wife*) HAVE nominated, substituted, and appointed, and by this present deed or writing, under their respective hands and seals, and attested by the two or more credible persons, whose names are or are intended to be hereupon indorsed as witnesses attesting the same, Do nominate, substitute, and appoint the said (*new trustees*) (4) to be trustees in the room, place, and stead of them the said (*old trustees*), to act in, and execute the several trusts so reposed in them the said (*old trustees*) in and by the said in part recited indenture of settlement as aforesaid, or such of the said trusts as are still in being, and capable of taking effect. AND THIS INDENTURE FURTHER WITNESSETH, that for the purpose of vesting (5) the said messuages or tenements, and premises, in the said (*new trustees*) for the remainder of the several terms of years now to come therein respectively, in pursuance and for the purposes of the said in part recited indenture of settlement, and for and in consideration of the sum of 5*s*. of lawful English money, to the said (*old trustees*)

Resignation of old trustees.

WITNESS.
Appointment of new trustees.

FURTHER WITNESS.
Old trustees assign.

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(1) Recite here the power of appointing new trustees on the death or resignation of the old trustees. The form will be similar to that given, *ante*, No. CVII. p. 351.

Power of appointing new trustees.

(2) If the change be of one or more trustees only, and not the whole of the old, see ibid. p. 350. n. 3.

Partial change of trustees.

(3) If the appointment of the new trustees be by the survivor of the husband and wife, or by the surviving trustees, see *ante*, p. 353. n. 1.

Appointment by survivor.

(4) If one or more new trustees be appointed, see *ante*, p. 354. n. (1).

Partial change of trustees.

(5) If the appointment be of one or more trustees, to act in conjunction with the continuing trustees, say,

Partial change of trustees.

"For the purpose of vesting the said messuages or tenements, and premises in the said (*new trustees*) jointly with the said (*continuing trustees*), for the remainder of the several terms of years now to come therein respectively, in pursuance, &c." *as above.*

APPOINTMENTS.
New Trustees (Leasehold).

in hand well and truly paid by the said (*new trustees*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, THEY the said (*old trustees*) at the request, and by the direction and appointment of the said (*husband and wife*) testified by their severally being parties to, and sealing and delivering these presents, HAVE, and each of them HATH, bargained, sold, assigned, transferred, and set over, and relinquished and quitted claim, and by these presents, Do, and each of them DOTH, bargain, sell, assign, transfer, and set over and relinquish, and quit claim, and by way of conveyance only, and not for or by way of warranty of title, Do, and each of them DOTH, grant and confirm, unto the said (*new trustees*) (1) their executors, administrators, and assigns, ALL &c. (2), being the several messuages or tenements, and premises, which in or by the hereinbefore in part recited indenture of settlement of the day of , were assigned unto them the said (*old trustees*) as aforesaid, or mentioned or intended so to be, and all other the messuages or tenements, and premises, of and to which they the said (*old trustees*) are under or by virtue of the said hereinbefore in part recited indenture, possessed of or entitled to at law or in equity, or which are legally or equitably subject to the trusts, powers, provisoes, declarations, or agreements contained in the said indenture of settlement, together with all and every the rights, members, easements, privileges, advantages, and appurtenances, to the same premises belonging, or therewith, or with any part thereof now or usually occupied or enjoyed, and all the estate, right, title, interest, term, and number of years now to come and unexpired, property, claim and demand whatsoever, both at law and in equity, of them the said (*old trustees*) in, to, out of, upon or respecting the said premises or any part thereof; TO HAVE AND TO HOLD the said messuages or tenements, and all and singular other the premises hereby assigned, or otherwise assured or intended so to be, and every part and parcel of the

Parcels.

To hold to the new trustees for the residue of the term.

Partial change of trustees.

(1) If there be one or more new trustees appointed to act in conjunction with the continuing trustees, say,

"Unto the said A. B. his executors, administrators, and assigns."

Parcels.

(2) Here describe the premises intended to be assigned to the new trustees.

Indorsement.

If the assignment be by indorsement, and there be no variation in the description of the parcels, they may be omitted, and say,

"ALL and singular the messuages or tenements and other the premises in the within written indenture described, and thereby assigned, or now assured or vested in the said (*old trustees*), &c." *as above.*

APPOINTMENTS.
New Trustees (Leasehold).

same, with their and every of their respective rights, members, privileges, easements, advantages, and appurtenances, unto the said (*new trustees*) (1), their executors, administrators, and assigns, from

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(1) If there be one or more new trustees appointed to act in conjunction with the remaining or continuing trustees, say, Partial change of trustees.

"Unto the said A. B. his executors, administrators, and assigns, from henceforth for and during the residue and remainder of the said several terms of years, which are or may be now to come and unexpired in the said premises by efflux and computation of time, SUBJECT nevertheless to the payment of the yearly rents in or by the said several indentures of lease reserved respectively, and to the performance and observance of the several covenants, clauses, provisoes, and agreements therein contained, to be henceforth paid, performed, or observed for, or in respect of the said premises, BUT UPON TRUST nevertheless, and to the end and intent, that he the said A. B., his executors, or administrators, shall and do forthwith and immediately after the sealing and delivery hereof, by an indenture already prepared and engrossed, and indorsed on these presents, and bearing, or intended to bear even date herewith, or by some other indenture, deed poll, or proper assurance, assign and transfer all and singular the messuages or tenements, and other the premises hereinbefore assigned or mentioned or intended so to be, and all the estate, right, title, trust, and interest, of him the said A. B. therein and thereto, unto them the said (*continuing and new trustees*), their executors, administrators, and assigns, so and in such manner as that the same may be well and effectually vested in them, upon and for such and the same trusts and purposes, and under and subject to such and the same powers, provisoes, declarations, and agreements, as are contained, expressed, or declared, of or concerning the same messuages or tenements, and premises, in and by the hereinbefore in part recited indenture of settlement, or such and so many of them as are now subsisting and capable of taking effect."

Use of indorsed assignment.

The reason of the assignment to A. B. arises from the necessity of the trustees having a joint-tenancy in the trust property, in order that upon the death of either it may vest in the survivor, and the impossibility of a person conveying to himself; hence it becomes requisite that the continuing trustees should divest themselves of the trust estate, for the purpose of its being again vested in them, at the same time, and by the same conveyance by which it is vested in the new trustees, which gives them a joint and co-equal estate, see 2 Blac. Com. 180.; but in the case of freehold property, the same thing may, in many cases, be effected by the statute of uses, by conveying the estate to the new trustees only, to the *use* of themselves and of the former trustees. See *ante*, No. CVII. p. 350. n. 3.

APPOINTMENTS.
New Trustees (Leasehold).

henceforth for and during the residue and remainder of the said several terms of years, which are or may be now to come and unexpired in the said premises, by efflux and computation of time, SUBJECT nevertheless to the payment of the yearly rents, in or by the said several indentures of lease reserved respectively, and to the performance and observance of the several covenants, clauses, provisoes, and agreements therein contained, to be henceforth paid, performed, or observed, for or in respect of the same premises, BUT upon and for such and the same trusts, intents, and purposes, and under and subject to such and the same powers of sale and exchange, and other powers and provisoes, as are contained, expressed, or declared, of or concerning the same premises, in and by the said in part recited indenture of settlement, or such and so many of them as are now subsisting, and capable of taking effect; to and for the end, intent, and purpose, that they the said (*new trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, may be enabled to perform and execute all and every the same trusts, and exercise all and every the same powers and authorities, in like manner in all things, as if the names of the said (*new trustees*) had been inserted in the said in part recited indenture of settlement, instead of the names of them the said (*old trustees*), and to, for, and upon no other use, intent, or purpose, whatsoever. AND they they said (*old trustees*) for themselves severally and respectively (1), and for their several and respective heirs, executors, and administrators, but not the one for the other of them, or the heirs, executors, and administrators, or the acts, deeds, omissions, or defaults of the other of them, but each for himself only, and his own heirs, executors, and administrators, and acts, deeds, and defaults, do and each of them doth hereby covenant, declare, and agree, with and to the said (*new trustees*) their executors, administrators, and assigns, that they the said (*old trustees*) have not, nor hath any or either of them (each covenanting separately as aforesaid), at any time heretofore, either together or separately, made, done, committed, executed, or knowingly occasioned, suffered, or omitted, nor been parties or privies, or party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said messuages or tenements, and premises hereby assigned, or mentioned or intended so to be, or any of them, or any part thereof, are, is, can,

Subject to the rents and covenants in the lease.

Upon the trusts contained in the settlement.

Covenant by the old trustees that they have done no act to encumber.

(1) See observations on this covenant, *ante*, MOD. PREC. Vol. II. p. 245. n. (33), where a different form is given.

APPOINTMENTS.
New Trustees (Leasehold).

shall or may be impeached, charged, encumbered, or prejudicially affected in any manner howsoever, or whereby the said (*old trustees*) are or may be in any wise prevented from assigning and assuring the said messuages, or tenements, and premises, or any part thereof, unto the said (*new trustees*), their executors, administrators and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents (1). IN WITNESS, &c.

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(1) Here may be added, a release and acquittance from the celles qui trust to the retiring trustees, if such be the intent of the parties; the form of such release will be found *ante*, No. XI. p. 87. n. (19).

Release from celles qui trust.

APPOINTMENTS.

New Trustees (Leasehold).

The Re-assignment *of* Leasehold *Property from A. B. to the old and new trustees, to be indorsed on the preceding deed* (1).

THIS INDENTURE of two parts made the day of in the year of our Lord 18 , BETWEEN the within named A. B. of the one part, and the within named (*continuing and new trustees*) of the other part, WITNESSETH that in performance and execution of the trusts in him reposed by the within written indenture, and in consideration of the sum of 5*s.* of lawful English money, to the said A. B. in hand well and truly paid by the said (*continuing and new trustees*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, HE the said A. B. HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over, and by way of conveyance only, and not for or by way of warranty of title, DOTH grant and confirm unto the said (*continuing and new trustees*), their executors, administrators, and assigns, ALL and singular the messuages or tenements, and other the premises in the within written indenture described, and thereby assigned unto the said A. B., his executors, administrators, and assigns, or mentioned so to be, with their and every of their rights, members, and appurtenances; and all the estate, right, title, interest, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said A. B. of, in, to, out of, or concerning the same premises, and every or any part thereof, under or by virtue of the within written indenture, or otherwise howsoever; TO HAVE AND TO HOLD the said messuages or tenements, and all and singular other the premises hereby assigned, or mentioned or intended so to be, with their and every of their appurtenances, unto the said (*continuing and new trustees*) their executors, administrators, and assigns, from henceforth for and during all the residue and remainder of the several terms of years, which are or may be now to come and unexpired, in the said premises, by efflux and computation of time, SUBJECT nevertheless to the payment of the yearly rents, in or by the said several indentures of lease reserved respectively, and to the performance and observance of the several covenants, clauses, provisoes, and agreements therein contained, to be henceforth paid, performed, or observed, for or in respect of the same premises,

WITNESS. A. B. assigns.

Parcels.

To hold to the old and new trustees.

Subject to rents and covenants in the leases.

(1) See *ante*, pp. 350. n. 3. 365. n. (1).

APPOINTMENTS.
New Trustees (Leasehold).
Upon the trusts of the settlement

But upon and for such and the same trusts, and to and for such and the same ends, intents, and purposes, and under and subject to such and the same powers, provisoes, declarations, and agreements, as are contained, expressed, or declared aforesaid, of or concerning the same messuages or tenements, and premises, in or by the within in part recited indenture of settlement, or such and so many of them, as are now subsisting and capable of taking effect, to and for the end, intent, and purpose, that they the said (*continuing and new trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, may be enabled to perform and execute all and every the same trusts, and exercise all and every the same powers and authorities in like manner, in all respects, as if the names of the said (*new trustees*) had been inserted in the said indenture of settlement, instead of the names of the said (*deceased or resigning trustees*), and to, for and upon no other trust, intent, or purpose whatsoever. IN WITNESS, &c.

APPOINTMENTS.

New Trustees (Money in funds).

No. CIX.

An Appointment of New Trustees *of* Money *in the* Funds, *in the room of Old Trustees deceased or resigning.*

Variations where one or more new trustees are appointed to act in conjunction with one or more of the old trustees.—Where the property or part is a reversionary interest.—Where it consists of sums due upon bond or mortgage, and other personal property.—Where the appointment is by Indorsement on the trust deed.

THIS INDENTURE (1) of parts, made the day of in the year of the reign, &c. and in the year of our Lord

Parties. BETWEEN (*the old trustees*) of, &c. (2) of the first part, (*the husband and wife*) of, &c. of the second part, and (*the new trustees*) of, &c. of the third part (3). WHEREAS (4) by virtue and in pursuance of

Recital of marriage settlement of money in the funds. an indenture bearing date the day of , which was in the year , and made or expressed to be made between, &c. purporting to be a settlement made in contemplation of a marriage then intended, and which afterwards took effect, betwcen the said (*husband and wife*) the sum of £ , three per cent. Consolidated Bank Annuities, was transferred into the names of the said (*old trustees*) in the books of the Governor and Company of the Bank of England,

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(1) See ante, No. CVII. p. 350, n. (1).

Indorsement. (2) If the appointment be by indorsement, say, "the within named," instead of describing the parties.

Partial change of trustees. (3) If any part of the trust property consist of a reversionary interest in money in the funds, sums due upon bond or mortgage, &c. and there be only a partial change of trustees, add,

"AND A. B. a person named and appointed by, and on the behalf of the said (*continuing trustees*) for the purposes hereinafter mentioned of the fourth part."

Indorsement. (4) If the appointment be by indorsement, this recital of the settlement may be omitted.

APPOINTMENTS.

New Trustees (Money in funds).

upon the trusts therein declared concerning the same (1). AND WHEREAS, &c. (2). AND WHEREAS (3) the said (*old trustees*) being desirous of resigning and being discharged from the trusts reposed in them by the hereinbefore in part recited indenture, the said (*husband and wife*) (4) have requested the said (*new trustees*) to become trustees, and to take upon themselves the execution of the trusts of the said settlement, in the place and stead of the said (*old trustees*), which they have consented so to do. AND WHEREAS the said sum of £ , three per cent. Consolidated Bank Annuities, hath this day been accordingly transferred by the said (*old trustees*) into the joint names of them the said (*new trustees*) in the books of the Governor and Company of the Bank of England. NOW THIS INDENTURE WITNESSETH, that by virtue and in execution of the power or authority given or reserved to them the said (*husband and wife*) for that purpose, by the hereinbefore in part recited indenture, THEY the said (*husband and wife*) HAVE nominated, constituted and appointed, and by this present deed or writing under their respective hands and seals, and attested by the two credible persons whose names are or are intended to be hereupon indorsed as witnesses attesting the same, Do nominate, substitute and appoint the said (*new trustees*) (5) to be trustees in the room, place and stead of them the said (*old trustees*), and to act in and execute the several

Resignation of old trustees.

Transfer of money in the funds into the names of the new trustees.

WITNESS. Appointment of new trustees.

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(1) If part of the trust property consist of a reversionary interest in money in the funds, sums due upon bond or mortgage, &c. say, Reversionary interest, &c.

"AND WHEREAS by the said indenture, the sum of £ , three per cent. Consolidated Bank Annuities, expectant upon the decease, or sooner determination of the estate for life of (*the tenant for life*), and the funds and securities for the same, together with the principal sum of £ , secured upon certain premises therein particularly described, and other personal property, were assigned unto the said (*old trustees*), their executors, administrators and assigns, upon the trusts therein declared concerning the same."

(2) Recite here the power of appointing new trustees on the death or resignation of the old ones, the form of the recital will be similar to that given, *ante*, No. CVII. p. 351. Power of appointing new trustees.

(3) If the appointment be of one or more new trustees, to act in conjunction with one or more surviving or continuing trustees, see *ante*, No. CVII. p. 350, n. 3. Partial change of trustees.

(4) If the appointment of the new trustees be by the survivor of the husband and wife, or by the surviving trustees, see *ante* p. 353, n. (1). Appointment by survivor.

(5) If one or more new trustees be appointed to act in conjunction with one or more continuing trustees, see *ante* p. 354, n. (1). Partial change.

APPOINTMENTS.

New Trustees (Money in funds).

trusts reposed in them the said (*old trustees*), in and by the said in part recited indenture of settlement, or such of the said trusts as are still in being or capable of taking effect (1). AND THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed by and between all the said parties hereto, and the true intent and meaning of them and these presents is, that they the said (*new trustees*) and the survivors and survivor of them, and the executors

FURTHER WITNESS.

Declaration that new trustees shall stand possessed of the trust property.

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(1) If part of the property consist of a reversionary interest in money in the funds, money on mortgage, or other securities, add here,

Assignment of reversionary interest and personal property.

"AND THIS INDENTURE FURTHER WITNESSETH, that for the purpose of vesting the sum of £ , three per cent. Bank Annuities, so expectant as aforesaid, and also the principal sum of £ , so secured upon mortgage, as hereinbefore is mentioned, and other the trust property aforesaid in the said (*new trustees*), and also for and in consideration of the sum of 5*s.* of lawful English money, to the said (*old trustees*) in hand paid by the said (*new trustees*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, THEY the said (*old trustees*), at the request and by the direction and appointment of the said (*husband and wife*) [*or as the case may be*], testified by their severally being parties to, and executing these presents, HAVE, and each of them HATH bargained, sold, assigned, transferred, and set over, and by these presents Do, and each of them DOTH bargain, sell, assign, transfer, and set over unto the said (*new trustees*), their executors, administrators and assigns, ALL that the said sum of £ , three per cent. Consolidated Bank Annuities, to or in which the said (*old trustees*) shall or may become, or if these presents had not been made, would or might have become entitled or interested in possession, upon the decease or other sooner determination of the estate for life of the said , or otherwise howsoever; AND also ALL that the said principal sum of £ , so now due and owing upon the hereinbefore in part recited mortgage; AND also ALL those the said Exchequer Bills numbered respectively and , and the principal money thereby secured, and all interest and arrears of interest due, or to grow due, for or in respect of the same, or either of them respectively, and also the hereinbefore in part recited mortgage, and all other deeds, instruments, or writings, given for securing the payment of the said respective sums of £ and £ , and interest, and all benefit and advantage whatsoever, to arise or be had, received or taken by or from the same respectively; and all the estate, right, title, interest, claim and demand whatsoever, both

APPOINTMENTS.

New Trustees (Money in funds).

and administrators of the survivor, and their and his assigns, shall stand possessed of and interested in the same sum of £ , three per cent. Consolidated Bank Annuities, and the dividends, interest, and annual proceeds thereof (1), upon and for such and

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at law and in equity, of them the said (*old trustees*) in, to, out of, upon, or in respect of the said sum of £ , three per cent. Consolidated Bank Annuities in reversion expectant as aforesaid, and the said principal sums of £ and £ and interest, and all and every other the funds and securities, upon which the said sums respectively, or any or either of them, or any part thereof, shall or may at any time hereafter be placed out or invested, or charged with the payment thereof respectively, TO HAVE AND TO HOLD, receive, take and enjoy, the said sum of £ , three per cent. Consolidated Bank Annuities, immediately from and after, and expectant upon the decease or other sooner determination of the estate for life of the said , and also the said principal sums of £ and £ , and the interest, dividends, funds, securities, and other the premises hereinbefore assigned, or mentioned, or intended so to be, unto the said (*new trustees*), their executors, administrators and assigns, UPON THE TRUSTS, and to and for the several ends, intents and purposes hereinafter declared or expressed concerning the same."

Assignment of money lent upon mortgage by old trustees should be by separate instrument.

If however the trust property consist of money lent out upon mortgage by the old trustees, the assignment of it to the new trustees should be by a separate instrument, because should they have occasion to call in the money and be obliged to procure it by an assignment of the mortgage, the assignee will expect to have delivered to him the deed by which it was assigned to them, which would in such case carry with it their deed of appointment and declaration of trust.

Partial change of trustees.

If there be one or more new trustees appointed to act in conjunction with one or more continuing or surviving trustees, and part of the property consist of a reversionary interest in money in the funds, money due upon bond or mortgage, or other personal property, the assignment should for the reasons given *ante* p. 350, n. (1), be made by the old trustees to a third person, to be by him conveyed to the new trustees in conjunction with the surviving or continuing trustees, the form of what will be similar to that given of leasehold property, *ante*, p. 368.

Reversionary interest, &c.

(1) If part of the trust property consist of a reversionary interest in money in the funds, money due upon bond or mortgage, &c. add,

"And also the said sum of £ three per cent. Consolidated Bank Annuities in reversion expectant as aforesaid, and the said principal sums of £ and £ respectively, and the several securities for the same."

APPOINTMENTS.

New Trustees (Money in funds).

Upon the trusts contained in the settlement.

the same trusts, intents and purposes, and under and subject to such and the same powers, provisoes, declarations and agreements as are contained, expressed, or declared, of or concerning the same, or other the Bank Annuities, funds and securities, in or by the herein-before in part recited indenture, of the day of , or such and so many of them as are still subsisting, or capable of taking effect. [*Add covenant by resigning trustees, that they have done no act to incumber*](1). IN WITNESS, &c.

Covenant against encumbrances. Release to retiring trustees.

(1) The form of this covenant will be similar to that given *ante*, p. 358.

Here may be added a release from the *cestui qui* trust to the retiring trustees, if such be the intention of the parties: for the form of which release, see *ante*, p. 358. n. (1).

No. CX.

*An Appointment of New Trustees of a joint-stock company, in the room of others retiring (1).

THIS INDENTURE of five parts made the day of in the year of the reign, &c. and in the year of our Lord BETWEEN (*present trustees*), the acting trustees for the time being of a company of proprietors entitled in of the first part; the (*present directors*), directors of the said company of proprietors, of the second part; (A. B.) being a person named and appointed as a trustee for the purposes hereinafter mentioned of the third part; (*new trustees*) of, &c. of the fourth part; and they the said (*continuing and new trustees*) of the fifth part. WHEREAS under or by virtue of indentures of, &c. bearing date, &c. being the deed of co-partnership or settlement of or between the said company of proprietors, the messuages, buildings and premises in or upon which the concerns of the said company are now carried on, situated at aforesaid, together with various freehold, leasehold, and other estates, property and effects of or belonging to the said company of proprietors, are, by divers conveyances, assurances and other acts of law, now become vested in the said (*present trustees*), in trust for the said company, and to be from time to time conveyed, transferred and disposed of, as the directors thereof for the time being shall direct or appoint. AND WHEREAS divers leases, bonds, warrants of attorney, and other title deeds and assurances, have also at various times been deposited with them the said (*trustees*), for the security of money advanced by or otherwise owing to the said company: AND WHEREAS the said (*retiring trustees*) have, in pursuance of the deed of settlement and rules of the said company, retired from and ceased to be trustees thereof, and the said (*new trustees*)

Recitals.

(1) See notes to Nos. CVII., CVIII., CIX., *ante*, pp. 350. 362. 370. If part of the premises be copyhold, see *ante*, p. 350. n. (1).

Copyholds.

APPOINTMENTS.
Trustees (new) of a Company.

have been duly elected in their stead, whereupon it has become expedient that the several real and personal estates and effects of the said company so vested in them and their late co-trustees as aforesaid, should be transferred unto and be vested in the succeeding trustees jointly with the continuing or still subsisting trustees, upon the said company, upon the trusts hereinafter expressed. NOW THEREFORE THIS INDENTURE WITNESSETH, that for the purpose of conveying and assuring unto and vesting in the said (*new trustees*) jointly with them the said (*continuing trustees*) all and singular the messuages, hereditaments and real estates now vested in them the said (*present trustees*) in trust as aforesaid, and for and in consideration of the sum of 10*s.* of lawful English money to them the said (*present trustees*) in hand well and truly paid by the said (*new trustees*), at the time of the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), they the said (*present trustees*), at the request and by the direction and appointment of the several persons hereinbefore named, as the present directors of the said company testified by their severally being parties to and signing and sealing these presents HAVE, and each of them according to his estate, right, title, and interest, HATH bargained, sold, aliened, and released, and by these presents do, and each of them, according to such his said estate, right, title and interest, DOTH bargain, sell, alien and release, unto the said (*new trustees*) and their heirs, all, every, and singular the several messuages or tenements, lands, hereditaments, and other the real estates of freehold whatsoever, which at or immediately before the time of the sealing and delivery of these presents, or the indenture of bargain and sale hereinafter referred to, are, or is, or were, or was, in them the said (*present trustees*), or any or either of them in trust for or on the part or behalf of the said company and the several proprietors thereof in any manner howsoever, (all which said messuages or tenements, lands, hereditaments, and real estates, are now in the actual possession of them the said (*new trustees*) by virtue of a bargain and sale for a year to them thereof made by indenture bearing date the day next before the sealing and delivery of these presents); and the reversion and reversions, remainder and remainders of and in all and singular the same hereditaments and premises, and every of them respectively, and all and every the rents, issues, profits, and proceeds thereof, and all the estate, right, title, use, trust, possession, property, claim, and demand whatsoever, both at law and in equity, of them the said (*present trustees*), and of each of them respectively, as such trustees as aforesaid, of, in, to or concerning the same

WITNESS.
Present trustees convey the *freehold* property of the company to new trustees.

APPOINTMENTS.

Trustees (new) of a Company.

premises, or any part or parcel thereof, TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the hereditaments, real estates, and premises hereinbefore bargained, sold, and released, or otherwise assured, or intended so to be, with their and every of their rights, members and appurtenances unto the said (*new trustees*) and their heirs, but to the use of the said (*continuing trustees*), and of the said (*new trustees*), their heirs and assigns for ever, upon the trusts nevertheless, and to and for the ends, intents, and purposes hereinafter expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the purpose of assigning and assuring unto and vesting in them the said (*new trustees*), jointly with the said (*continuing trustees*), all and singular the leaseholds, chattels, and personal estates and effects of the said company, and for and in consideration of the further sum of 5*s.* of lawful money aforesaid to the said (*present trustees*) at the same time in hand paid by the said A. B., the receipt whereof is hereby acknowledged, they the said (*present trustees*), at and by such request, direction, and appointment, and so testified as hereinbefore is mentioned, HAVE, and each and every of them, according to his estate, right, title, and interest, bargained, sold, assigned, transferred, and set over, and by these presents do, and each and every of them, according to such his said estate, right, title, and interest, DOTH bargain, sell, assign, transfer, and set over, unto the said A. B., his executors, administrators, and assigns, ALL, every, and singular the leasehold messuages or tenements, and other the chattels, estates, and interest; and all, every, and singular the bonds, warrants of attorney, judgments, simple contract debts, rents and arrears of rent, and other goods, chattels and personal estates, securities and effects whatsoever, which at or immediately before the signing or sealing of these presents, are or is vested in, or are or is in the possession of them the said (*present trustees*), or any or either of them, in trust for or on the part or behalf of the said company in any manner howsoever, together with all principal and interest monies now due, or hereafter to grow or become due, upon or by virtue of the said securities, or any or either of them, and all benefit and advantage whatsoever to be had, made, or derived by or by means thereof respectively, from any process, extent, execution, or other proceedings already had or issued, or at any time hereafter to be had or issued therefrom, or upon any of them; and all the estate, right, title, interest, term, or number of years now to come and unexpired, property, possession, claim, and demand whatsoever, both at law and in equity, of them the said (*present trus-*

To hold to use of them said old and new trustees.

FURTHER WITNESS.

Present trustees assign *leaseholds* and *personalties* to A. B.

APPOINTMENTS.
Trustees (new) of a Company.

tees), and each and every of them, in, to or respecting the same premises or any of them, or any part thereof, TO HAVE or to HOLD the said leasehold messuages or tenements, and all and singular the chattel estates and interests lastly hereby assigned or otherwise assured, or intended so to be, with their respective rights, incidents, and appurtenances, unto the said A. B., his executors and administrators, for and during all the several terms or numbers of years which are, is, or may be now subsisting, and to come of, in, or concerning the same respectively, or any or either of them: AND TO HOLD, receive and take the said bonds, judgments, simple contract and other debts, goods, chattels, securities, and effects hereinbefore assigned or otherwise assured, or intended so to be, unto and by him the said A. B. his executors and administrators. But nevertheless, as to all the said leasehold chattel and personal estates and effects, upon the trusts, and to and for the ends, intents, and purposes following (that is to say), upon trust that he the said A. B., his executors and administrators, shall and do forthwith and immediately after the sealing and delivery thereof, by some deed or writing to be indorsed on these presents (1), or otherwise re-assign, transfer, and assure all and and singular the same premises, and all the estate, right, title, trust, and interest of him the said A. B. therein or thereto, unto them the said (*continuing and new trustees*), their executors, administrators, and assigns, to the end that all and every the said last mentioned trust premises shall and may be well vested in them the said (*continuing and new trustees*), upon such trusts, and to and for such ends, intents, and purposes as are hereinafter declared or expressed concerning the same. AND for the better enabling the said (*continuing and new trustees*) to receive the said lastly assigned premises, they the said directors have made, constituted, and appointed, and in their place and stead put, and by these presents do make, &c. the said (*continuing and new trustees*) the true and lawful attornies of them the said directors, for and on the part of the said company, to ask for, demand, and receive all and every or any of such debts, property, and effects as are now or hereafter shall be or become due and payable, or belong to the said company, and to confess and enter up any judgment or judgments, and to institute, prosecute, and issue out, or cause, procure, or direct to be instituted, prosecuted, issued out, and executed, any actions, suits, executions, extents, or other process or proceedings thereupon, and to sign and give good and sufficient

To hold leaseholds for residue of terms.

And judgments, &c. absolutely.

Power of attorney.

(1) See this indorsement, *post.* p. 382.

APPOINTMENTS.

Trustees (new) of a company.

receipts, releases, and discharges, for all and every the monies, property and effects which shall be received by them under or by virtue of these presents, and generally to do all and every such other lawful acts, matters, and things whatsoever, as well for the recovery and receiving, as also for the releasing and discharging all and singular the said debts, monies and effects, and every or any of them, as they the said trustees shall from time to time think fit and expedient; and it is hereby declared, and expressly agreed by and between all and every the parties hereto, and the true intent and meaning of these presents is, that the said (*continuing and new trustees*), and their heirs, executors, administrators and assigns (according to the several natures and qualities of the said hereditaments, property and premises), shall stand seised, possessed of, entitled to, and interested in all and every the freehold and leasehold messuages, lands, hereditaments, goods, chattels and effects respectively, which hereby are or is, or by the deed or instrument mentioned or intended to be hereupon indorsed, shall or may be to them granted, released, assigned, or otherwise assured, or in them vested, upon the trusts, and for the ends, intents, and purposes following; (that is to say,) IN TRUST for the several proprietors and shareholders for the time being, of or in the said company, according to their several and respective estates, rights, titles and interests in or to the same, under or by virtue of the hereinbefore in part recited deed of settlement or otherwise, and to be conveyed, assigned, transferred and disposed of from time to time, for such ends, intents and purposes, and in such manner and form as the directors for the time being of the said company, or a competent number of them, shall in writing under their respective hands lawfully direct, appoint or require concerning the same respectively. AND the said (*retiring trustees*), for themselves severally and respectively, and for their several and respective heirs, executors and administrators, and not jointly, or any one or more of them, for any other or others of them, but each for himself only, and for his own heirs, executors and administrators, and his and their own respective acts, deeds and defaults only, do and doth hereby covenant, declare and agree, with and to the said (*continuing and new trustees*), their heirs, executors, administrators, and assigns, in the manner following; (that is to say,) that they the said (*retiring trustees*) have not nor hath either of them, (each covenanting separately as aforesaid,) at any time heretofore, made, done, or knowingly suffered, occasioned or omitted, nor caused or procured to be made, done, occasioned, suffered or omitted, nor been parties or privies, or party or privy to, nor shall nor will at any time hereafter, without the con-

In trust for the proprietors of the company, according to their respective interests.

Covenant by retiring trustees that they have not encumbered.

APPOINTMENTS.

Trustees (new) of a company.

sent in writing of the directors for the time being of the same company, or of a competent number of them, make, do, execute or knowingly suffer or occasion, or cause or procure to be made, done, executed, suffered or occasioned, or be parties or party to any act, deed, matter or thing whatsoever, whereby or by means whereof the messuages or tenements, lands, hereditaments, real and personal, goods, chattels and effects, securities and premises hereinbefore respectively granted, bargained, sold, released and assigned, or otherwise assured, or intended so to be, or any part of the same, have or has been, or shall, can or may be impeached, charged or encumbered, released or otherwise prejudicially affected in any manner howsoever, or by reason or means whereof the said (*continuing and new trustees*) or their authorized agents, shall, can or may be prevented or impeded in or from having, receiving, obtaining or possessing the same, or any of them, or of any part thereof. AND further, that they the said (*retiring trustees*), their heirs, executors and administrators (they respectively covenanting severally as aforesaid), shall and will, from time to time and at all times hereafter, at the request, and the costs and charges in the law, of any person or persons lawfully requiring the same, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assignments, conveyances, assurances, matters and things whatsoever, for the further, better, more perfectly or satisfactorily granting, releasing, assigning, and assuring all and singular the messuages or tenements, hereditaments, and real and personal estates, interests, effects, and premises hereby granted, released, and assigned, or otherwise assured respectively, or expressed, or intended so to be, or any of them, or any part thereof, unto, or for vesting the same in the said (*continuing and new trustees*), their heirs, executors, administrators and assigns, according to the respective natures of the said property and premises, and for enabling them, or any or either of them, to recover, obtain, possess and receive the same, to, upon, and for the uses, trusts, intents, and purposes hereinbefore declared or expressed concerning the same respectively, and according to the true intent and meaning of these presents, or unto such other person or persons, and for such other ends, intents, and purposes as the directors of the said company for the time being, or a competent number of them, shall, in writing under their respective hands direct or require. AND also shall and will, from time to time, and at all times hereafter, permit and suffer the names of them the said (*retiring trustees*) respectively, to be used in all or any actions, suits, pleadings or proceedings, for recovering, or obtaining, or protecting,

And for further assurance.

And suffer their names to be used.

APPOINTMENTS.

Trustees (new) of a company.

or defending the real or personal estates, goods, chattels, property, and effects of the said company, or any part thereof, in such manner and form as shall be deemed expedient or advisable in that behalf, they and each of them, and their respective heirs, executors and administrators, being well and sufficiently indemnified and saved harmless, of, from and against all costs, damages, and expences to be by them, or any or either of them sustained, or liable to pay, bear or sustain by reason thereof.

They being indemnified.

AND in consideration of the premises aforesaid, they the said (*directors*), as such directors as aforesaid, do hereby, on the part and behalf of the said company and the several proprietors thereof, so far as they lawfully can or may, acquit, release, exonerate, and discharge the said (*retiring trustees*), and each of them, and their respective heirs, executors and administrators, and their and his goods and chattels, and lands and tenements respectively, of, from, and against all and all manner of actions, suits, costs, charges, damages, expences, claims and demands which at any time hereafter shall or may be brought, instituted, had or prosecuted against them, or any or either of them respectively, or which they or any or either of them shall or may sustain or be put unto on account or by reason of their having respectively been or acted as trustees of the company of proprietors aforesaid or otherwise, in the due performance of the trusts or duties in them respectively reposed in anywise relating thereto. IN WITNESS, &c.

Directors release retiring trustees.

APPOINTMENTS.

Trustees (new) of a company.

Re-conveyance by A. B. *of the Property vested in him, and to be indorsed upon the preceding Deed* (1).

KNOW ALL MEN BY THESE PRESENTS, that the within named A. B. in pursuance and execution of the trusts in him reposed, in or by the within written indenture, and in consideration of the sum of 5*s.* of lawful money of Great Britain to him in hand paid by the within named (*continuing and new trustees*), at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over unto the said (*continuing and new trustees*), their executors, administrators and assigns, all, every and singular the leasehold messuages or tenements, and all, every and singular the goods, chattels, bonds, warrants of attorney, judgments, debts, securities and personal estates and effects whatsoever, assigned to or otherwise vested in him the said A. B., in or by the said within written indenture or intended so to be, as within is expressed, with their and every of their rights, members, incidents and appurtenances, and all the estate, right, title and interests, trust, property, possession, benefit, advantage, claim, and demand whatsoever, both at law and in equity, of him the said A. B. of, in, to, or out of the same premises, and every and any part thereof, under or by virtue of the said within written indenture, or otherwise howsoever, in relation thereto, To HAVE AND TO HOLD the said leasehold messuages or tenements, and chattels, and personal estate and effects, and all and singular the premises hereby assigned or intended so to be, with their respective rights, members and appurtenances, unto them the said (*continuing and new trustees*), their executors, administrators or assigns, for all and every the term or period of years, and estates, and interests whatsoever, which is, are, or were assigned or otherwise assured to or vested in him the said A. B. in or by the said within written indenture: But nevertheless, to and for the use and benefit and upon and for the trusts, ends, intents and purposes, in or by the within written indenture, declared, expressed or referred unto, of or concerning the same, or to, upon, or for which they the said (*continuing and new trustees*),

A. B. assigns to continuing and new trustees

upon the trusts, &c. of the within indenture.

(1) See *ante*, pp. 350. n. (3). 365. n. (1).

APPOINTMENTS.
Trustees (new) of a company.

their executors, administrators and assigns, ought or are intended to hold, possess, or stand interested in the same respectively, under or by virtue of the within written indenture, and the said indenture of settlement therein referred to, or otherwise howsoever, and to, for or upon no other use, trust, intent or purpose whatsoever. IN WITNESS, &c.

APPOINTMENTS.
Umpire.

No. CXI.

Appointment of an Umpire *by Arbitrators disagreeing upon their award.*

Variations where the nomination is previously to or during the subsistence of their reference.

Recital of deed of submission to arbitration.

And power to appoint umpire.

Of difference of opinion between arbitrators.

TO ALL TO WHOM THESE PRESENTS SHALL COME, We the undersigned (*arbitrators*), of, &c., SEND GREETING. WHEREAS by indenture (1) bearing date the day of , last past, and made or expressed to be made between (*one of the parties in difference*), of, &c. of the one part, and (*the other party*), of, &c. of the other part, the said (*parties in difference*) agreed to refer certain differences then subsisting between them, and therein mentioned, to the judgment and arbitration of us the said (*arbitrators*). AND WHEREAS, it was thereby declared and agreed, that if we did not agree upon our award within the space of one calendar month, from the date of the said indenture, or without any such difference, if we should think proper, we should be at liberty to name and appoint any other person as umpire, or to assist us concerning the same. AND WHEREAS we have taken the matters so referred to us into our consideration (2), but cannot agree upon the award to be made concerning the

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Reference by bond.

(1) If the reference to arbitration be by mutual bonds, say,

"WHEREAS by mutual bonds under the respective hands and seals of the said (*parties in difference*) bearing date on the day of , last past, the said (*parties in difference*) agreed to refer, &c." *as above.*

Third person may be nominated before difference of arbitrators.

(2) Where arbitrators have a general power to choose an umpire, they may elect one during or previously to their examination of the matters referred to them; Roe dem. Wood v. Doe, 2 Term. Rep. 644; Harding v. Watts, 15, East, *556*; and cases there cited. And unless restrained by the terms of the submission, they may choose the umpire after the time allowed them for making their award, so that they do it before the time allowed the umpire to make his award; ibid. But

APPOINTMENTS.

Umpire.

same. Now know ye, that in pursuance of the power and authority so vested in us, by the hereinbefore in part recited indenture, We the said (*arbitrators*) Have nominated and appointed, and by these presents Do nominate and appoint (*the umpire*) (1), of, &c. to be umpire (2) between us in relation to the matters so referred to us as aforesaid, and do hereby refer all and singular the matters and things so referred to us unto the judgment and final determination of him the said (*umpire*) accordingly. IN WITNESS, &c.

Appointment of umpire.

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if their power of electing be only in the event of their not agreeing upon an award within a given period, and they name him before the time limited for making the award has expired, the nomination will be a nullity; Reynolds v. Gray, 1 Ld. Raym. 232; 1 Salk. 70. S. C. see also Mitchell v. Harris, 1 Ld. Raym. 671; 1 Salk. 71. S. C. 12 Mod. 512, S. C. such nomination however will not vitiate their award; Beck v. Sargent, 4 Taunt. 232.

(1) If the nomination be of a third person to assist in the arbitration, say,

" To assist us the said (*arbitrators*) in and concerning the matters and things so to us referred as aforesaid."

Third person named to assist.

(2) The election of an umpire is a determination of the authority of the arbitrators, even though he refuse the umpirage, unless the nomination be on condition of his accepting the reference, or unless he be named expressly for the purpose of assisting them in their award; Reynolds v. Gray, 1 Ld. Raym. 222; 1 Salk. 70. S. C. 12 Mod. 120. S. C.

Election of umpire determines authority of arbitrators.

*** It is not necessary that the appointment of an umpire by the arbitrators should be stamped. See Routledge v. Thornton, 4 Taunt. 704.

Stamp.

APPOINTMENTS.
Under-sheriff.

No. CXII.

**An Appointment of an* Under-sheriff *by the Sheriff of a County or City* (1).

THIS INDENTURE of three parts made the day of in the year &c., and in the year of our Lord 18 , BETWEEN (*sheriff*), of, &c. of the first part, (*under-sheriff*) of, &c. of the second part, and (*sureties*) of, &c. of the third part, WHEREAS the said (*sheriff*) hath been chosen and elected sheriff of the county of for one year from the date hereof, and hath consented to take upon himself the execution of the said office, AND WHEREAS the said (*sheriff*) having full confidence in the said (*under-sheriff*), hath agreed to appoint him the said (*under-sheriff*) to be his under-sheriff for the said county, and the said (*sureties*) have agreed to become his sureties for his good conduct therein; NOW THIS INDENTURE WITNESSETH, that he the said (*sheriff*) HATH deputed, ordained, and constituted, AND by these presents DOTH depute, ordain, and constitute the said (*under-sheriff*) to be the under-sheriff of him the said (*sheriff*) of or for the said county of for the term or period aforesaid, or so long as he the said (*sheriff*) shall continue in the said office. AND the said (*sheriff*) in order the more effectually to impower the said (*under-sheriff*) to execute the said office as much as in him lieth and he lawfully may, DOTH hereby authorise and empower him the said (*under-sheriff*) and all and every his clerk and clerks, deputy and deputies, attorney and attornies to be by him lawfully appointed in writing under his hand and seal, for and in the name of him the said (*sheriff*), as sheriff of the said county of , at or upon the request of any plaintiff or plaintiffs in any ac-

WITNESS. Sheriff appoints under-sheriff.

Power for under-sheriff to execute the duties of sheriff.

(1) Although a sheriff is an officer of discretionary and not merely ministerial authority, he is allowed to perform the duties of his office by deputy, 1 Roll. Ab. 274. and see 1 Elem. Conv. 2d Edit. p. 284.

tion at law or legal process, to sign, seal, execute, and as his act and deed deliver all and every assignment and assignments of any bail-bond or bail-bonds which shall or may at any time or times hereafter during his shrievalty be taken in his name as sheriff of the said county of , from any defendant or defendants therein, by virtue of any writ, precept, process or mandate whatsoever, which shall be directed to him for execution. AND in consideration of the premises and of the full confidence they have in the said (*under-sheriff*) they, the said (*sureties*), for themselves jointly and severally, and for their respective heirs, executors and administrators, Do and every of them DOTH covenant, promise and grant to and with the said (*sheriff*), his executors and administrators, by these presents, in the manner following (that is to say), that he the said (*under-sheriff*) shall and will well, truly, honestly and sufficiently during all the time the said (*sheriff*) shall continue in the said office of sheriff of the said county of , duly execute and perform the said office of under-sheriff of the said county, and well, honestly and carefully demean and behave himself therein; and well, truly, honestly and sufficiently execute all and every writ and writs, process and processes, warrant and warrants, precept and precepts, mandate and mandates directed or to be directed from our sovereign Lord the King, and from and out of all and every or any of his Majesty's courts at Westminster or other courts elsewhere, or from any commissioner or commissioners, justice or justices of the peace, or other person or persons, officer or officers, which have or shall have authority thereunto, to the sheriff of the county of , which shall be or ought to be executed; and of the same and every of them in all due, fit and convenient time, shall and will make true and sufficient returns at such days, times and places as the said (*sheriff*) by the said writs, warrants, precepts, mandates, or any of them is or shall be required, limited or appointed. AND also shall and will during the said time and at all times afterwards, save, keep harmless, and indemnified the said (*sheriff*), his heirs, executors and administrators, and his and their goods and chattels, and lands, tenements and hereditaments, and every part and parcel thereof, of and from all and all manner of action and actions, suit and suits, cause and causes of action and suit, fines, contempts, forfeitures, judgments, executions, damages, costs, losses, charges, troubles, and detriment whatsoever, which shall or may happen, arise or accrue unto, or shall be had, assessed, imposed or set upon or against the said (*sheriff*) as sheriff of the said county of , at any time or times, for or by reason of the not executing or returning, or the misexecuting or misreturning of any the said writ or writs, process or processes, war-

Covenant by sureties for under-sheriff's due execution of his office.

And his keeping sheriff harmless.

APPOINTMENTS.
Under-sheriff.

rant or warrants, precept or precepts, mandate or mandates, and so as that no trouble, loss, costs, charges or expences be sustained, incurred, or expended by the said (*sheriff*), his heirs, executors or administrators, in, about or concerning the same. AND shall and will from time to time and at all times give notice unto the said (*sheriff*) of all and every writ and writs which shall be sued or brought against him, and come to the hands of the said (*under-sheriff*) or any his deputy, clerks, or servants, or whereof he the said (*under-sheriff*) shall have notice; and shall not appear or cause an appearance to be made upon any writ or action which shall be brought against the said (*sheriffs*), or either of them, without the privity or allowance of him the said (*sheriff*). AND they the said (*under-sheriff and sureties*) for themselves jointly and severally, and their respective heirs, executors, and administrators, Do hereby covenant, promise, grant and agree to and with the said (*sheriff*) his executors and administrators, by these presents in the manner and form following (that is to say) (1), that they the said (*under-sheriff and sureties*) or some of them, their, or some of their executors or administrators, shall and will at all times hereafter acquit and discharge, or otherwise well and sufficiently save and keep harmless and indemnified the said (*sheriff*), his heirs, executors, and administrators, and his and their goods and chattels, lands and tenements, of and from all and every suits, charges, losses, payments, damages, expenses, fines, and detriment whatsoever, which shall or may at any time whilst the said (*sheriff*) shall remain in the said office happen or arise to him, his executors or administrators, or his, their or any of their goods, chattels, lands or tenements, for or by reason of any rescue or rescues,

Under-sheriff will give notice of writs to sheriff.

Will not appear to writs without privity of sheriff.

Covenant by under-sheriff and sureties to indemnify sheriff.

City of London.

(1) If the under-sheriff be so to the sheriffs of the city of London or other privileged place, add here,

"That the said (*under-sheriff*), or his deputy or deputies, clerk or clerks, or any other person or persons, for or under him, or them, or any of them, or in the name or names of him or any of them, shall not at any time or times hereafter during the said term or time, make or cause to be made, any return or returns of or to any writ or writs, process or processes, precept or precepts, warrant or warrants, mandate or mandates whatsoever, touching or in anywise concerning the liberties or franchises of the city of , in the name or names of the said (*sheriffs*), or either of them, as sheriffs of the city of London and county of Middlesex, without timely acquainting them the said (*sheriffs*) therewith, and taking and pursuing just and lawful directions therein, when and as the same shall to him be given in or concerning the same."

escape or escapes, or letting or suffering any prisoner or prisoners voluntarily and negligently go at large or escape; or for not taking sufficient bond or bonds with sufficient and good securities of or for persons arrested or to be arrested, or of or for prisoners bailable; or for refusing to accept of bond or bonds in such manner as is by law required of any person or persons arrested or to be arrested for any matters or causes for which he or they should or may be bailed by law; or for the making or making amiss all or any bail-bond or bail-bonds; or for filing any warrant or warrants of attorney in any of the courts of record at Westminster or elsewhere; or for or by reason of any act, negligence, misfeazance or nonfeazance, abuse, misdemeanour, commission or omission, default, delay, or contempt; or for or by reason of any other matter, cause, or thing which should or ought at any time or in anywise whatsoever to be done or performed by the said (*under-sheriff*) as under-sheriff of the said county of , or by any of his deputy or deputies, clerk or clerks, bailiff or bailiffs, servant or servants, or by reason of any failure or neglect in his or their duty or duties concerning the said office; or any cause, matter, or thing whatsoever, hereafter to be done, or omitted to be done, by him, them, or any of them. AND also that the said (*under-sheriff*) shall from time to time, and at all times as soon as conveniently may be, during the said time, and until the said (*sheriff*) shall be duly discharged from the said office, deliver or cause to be delivered to him the said (*sheriff*), a true account or inventory in writing, of all extents and judicial writs or process whatsoever which shall come to his hands, or shall by him or his agent or agents, clerk or clerks, deputy or deputies, or any person or persons, for, by, or under him be executed, with the teste and return of the same, and the sum of money therein specified, and the person or persons against whom such writ or writs, process or processes, shall be issued; and the person or persons by whom all, every, or any such writ or writs, process or processes shall be issued; and what has been done upon all, every, or any of such writ or writs, process or processes. AND that the said (*under-sheriff*) within the space of ten days next after any levy or receipt by him or any his deputy, clerk or servant, of any sum or sums of money, upon or by virtue of such extents or judicial writ or writs, process or processes, shall pay, or cause to be paid, the said sum or sums of money to the said (*sheriff*) or to such person or persons as he shall from time to time nominate and appoint to receive the same (he the said (*sheriff*) giving a note or receipt in writing under his hand, testifying the receipt of such sum or sums of money as shall be by him received). AND moreover that it shall be lawful for the said (*sheriff*) (notwithstanding anything con-

And that under-sheriff shall deliver in account of writs, &c.

And pay over money levied, &c.

Sheriff may remove bailiffs.

APPOINTMENTS.
Under-sheriff.

tained in these presents) upon complaint to him made of the misconduct of any bailiff employed within the said county of , in the duty of his place, situation or office, to remove, discharge and displace any such bailiff from all further employment as bailiff in the said county. AND moreover that the said (*under-sheriff*) shall and will from time to time, and at all times hereafter, give due notice to the said (*sheriff*) of all such personal attendance as shall from time to time be required or requisite to be made by him the said (*sheriff*) as sheriff of the said county of , and be at all times attending upon and assisting to the said sheriff whenever such personal attendance shall be had or required. AND also that he the said (*under-sheriff*) shall at all times be aiding and assisting to the raising and levying such force of men, horse, and arms, within the said county of as the said (*sheriff*) shall be enjoined or find it necessary to raise and levy; and shall from time to time and at all times as occasion shall require, give his personal attendance upon the said (*sheriff*) for the doing, performing, and executing of all such thing and things as shall be requisite on that behalf. AND further that he the said (*under-sheriff*) shall and will during the said time, well, truly, and faithfully, and to the best of his means, skill, and power, do, execute, and perform, all and every other act and acts, thing and things whatsoever, incident or belonging to him as under-sheriff of the said county of . AND also shall and will well and truly levy, collect, and gather all and singular such sum and sums of money, forfeitures, profits, and demands as do or shall in anywise concern or belong to the shrievalty or sheriff of the said county of ; and also all post fines, fines pro licentia concordandi, seisures, fee-farm rents, pipe-silver, exchequer silver, estreat of goods of traitors, felonious persons, and outlaws; and all and every sum and sums of money, forfeitures, estraits, escheats, and demands whatsoever, which shall be at any time or times estraited, charged, or imposed for the use of our sovereign Lord the King, his heirs and successors, or for or by reason of any estraits of writs, process of green wax, and otherwise, directed out of the Court of Exchequer or Crown-office, or any of the courts of record at Westminster or elsewhere, and commanded, directed, and appointed to be done, performed, or observed by the sheriff of the said county of *; and of the same and every of them, and of every part thereof, shall in due time, from time to time, make a just and true account and due satisfaction and payment thereof to the use of our sovereign Lord the King, his heirs, and successors, into the receipt of the Exchequer, by tally or tallies in due form, or into other the said courts as the case shall require; and also shall and will take out of the Pell-office a constat of every such pay-

Under-sheriff to give notice to sheriff of all requisite personal attendances.

And assist sheriff.

And shall do all things incident to the office.

Collect forfeitures, &c.

And duly account for same.

APPOINTMENTS.
Under-sheriff.

ment made and tally stricken; and shall likewise take out and obtain all other acquittances necessary and meet for the manifestation of every such payment as the case shall require; and all and every such constats and acquittances shall and will from time to time deliver unto the said (*sheriff*) within seven days next after every or any such payment made, or constat or acquittance obtained; and shall also from time to time keep harmless and indemnified the said (*sheriff*), his heirs, executors, and administrators, and every of their goods and chattels, lands, tenements, property, and effects, from and against our said sovereign Lord the King, his heirs, and successors, of or by reason of any default or neglect in regard thereto. AND moreover that the said (*under-sheriff*) his executors, administrators, and assigns, shall and will at his and their own proper costs and charges, in all things, join with the sheriff's clerks [*if for the city of London say*, the secondaries for the time being for both the compters in London, and with all other clerks appointed or to be appointed by the said (*sheriff*) as sheriff of the city of London, for the supplying the said office of under-sheriff of London, commonly called secondaries of the compters of London, or] for the orderly and duly proceeding for the passing the accounts [for London and Middlesex in one account] agreeably to the statute or statutes in that behalf made and provided touching sheriff's accounts, and shall and will, without delay, [jointly] proceed in the said accounts [in one as well in the particular thereof] with the auditor and auditors assigned to take the said accounts, as also in passing thereof [in one], and also in the declaration thereof before the barons of the said court of exchequer, and before any other person or persons to be thereunto authorised, and being ready for the declaration thereof, shall also at the like proper costs and charges of the said (*under-sheriff*) procure the said auditor and auditors to attend some of the barons to take the said declaration, and to make the usual allowances of the said accounts [for so much thereof as appertains to the said sheriff or county of Middlesex], and also to subscribe the said accounts and the duplicate thereof, to the end that one part thereof which shall be the charge remaining with our said Sovereign Lord the King, and the lord treasurer, or commissioners of the treasury and remembrancers of the exchequer, may be answered with the other duplicate thereof so subscribed, by some of the officers of the exchequer for the said sheriff, all which shall be solicited and followed in all offices and places through which the same ought duly to pass; and shall be got, finished and effectually effected by the said (*under-sheriff*) at his own proper costs and charges, [for so much thereof as shall concern

And procure accounts to be passed.

APPOINTMENTS.
Under-sheriff.

the said county of Middlesex,] and that the same shall be performed and done with due speed and without delay or unnecessary intermission, and shall be drawn and brought to the pipe-office within the time which the statute hath ordained concerning sheriff's accounts, and as by the statute or statutes in that behalf is limited and appointed; and likewise be dispatched from the pipe-office with all convenient expedition, and on or before the twenty-ninth day of September, which shall be in the year of our Lord procure a sufficient discharge and formal *quietus est* in due form of law, at the proper costs and charges of the said (*under-sheriff*) for so much of the said accounts as shall concern the said (*sheriff*) as sheriff of the said county of as aforesaid, his heirs, executors and administrators, and every of them, so that his or their lands, tenements, goods, chattels, and estates, may at all times hereafter stand free and clear from all damages, charges or accounts, for or by reason of the said office or place of sheriff of the said county of . AND moreover that the said (*under-sheriff*) at his own proper costs and charges, shall defray, bear, and pay all such monies and charges of what nature soever, as have been heretofore or ought to have been paid by the under-sheriff of the said county of , and at his own proper costs and charges, defray, bear, and lay forth all monies whatsoever which are or shall be expended at the several sessions held at or elsewhere for the said county of , at any time or times during the time for which the said (*sheriff*) shall continue to be sheriff of the said county of , and shall and will free, discharge and save harmless the said (*sheriff*) and his heirs, executors and administrators, of and from the same; and also defray, bear and pay all charges and other expences whatsoever, which are or ought to be paid or disbursed, in, for, or about the executing and punishing of all and every traitors, felons, and other persons whatsoever, who are or shall be attainted or condemned for treason or felony, or who shall be adjudged to be whipt, set upon the pillory, or otherwise punished whensoever or howsoever, according to law; and of such persons as shall be from time to time convicted and attainted, shall and will make, or cause to be made, due execution according to the judgment or sentence against every of them respectively to be pronounced. And also that the said (*under-sheriff*) or any of his deputy or deputies, clerk or clerks, bailiff or bailiffs, or any other officer or officers, who shall be at any time or times employed or retained by or under the said (*under-sheriff*), shall not without the special consent of the said (*sheriff*) in that behalf obtained in writing under his hands, detain or keep, above the space of twenty-four hours in their or any or

Bear all usual charges.

Execute sentences on convicts.

Will not keep prisoners more than 24 hours in custody.

APPOINTMENTS. *Under-sheriff.*

either of their custody, house, room, or chamber, or in any other house, room, chamber, or place whatsoever, any person or persons, by him, them, or any of them arrested, or to be arrested or taken within the said county of , for any debt, damage, fine, suit or cause, of above the value or sum of £20 of lawful money of Great Britain, or for several debts or causes together exceeding the said sum or value of £20, but every such person so arrested and taken for above the said sum or value of £20, shall forthwith, and without delay, commit and take, or cause to be committed and taken to the gaol or prison of , or some other known or common gaol or prison, appointed for the said county of , there to remain until such person or persons shall be discharged by due course of law; or unless he, she, or they, shall be let to bail upon good and sufficient sureties and bail according to the form of the statute in that case made, if the law shall require or warrant the sheriff or under-sheriff of the said county of , to let to bail any such person or persons, but not otherwise. AND that he the said (*under-sheriff*) shall well and truly, faithfully, providently, circumspectly, and diligently do, perform, execute, and accomplish, all and singular the acts, matters and things, which to the said office of sheriff or under-sheriff, of the said county of , during the time which the said (*sheriff*) shall continue in the said office, do and shall appertain, belong or ought to be by the said (*under-sheriff*) performed or accomplished (1). AND they the said (*under-sheriff and sureties*) for themselves jointly and severally, and for their several and respective heirs, executors and administrators, do, and every of them doth hereby covenant, promise and grant, to

And execute the sheriff's duties generally.

Covenant by sureties and under-sheriff to perform sheriff's bond.

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(1) If the under-sheriff be for the city of London, or other privileged place, add, City of London.

"And also that the said (*under-sheriff*) and all and every his bailiffs, clerks, servants and ministers, to the utmost of his and their and every of their power, and as much as in him, them, or any of them is or shall be, all and singular the liberties and franchises to the lord mayor, commonalty and citizens of the said city of London, and to the said (*sheriffs*) of London, or sheriff or sheriffs of the said county of Middlesex, belonging or appertaining, shall well and truly observe, perform, maintain and keep, in all places within the said county of Middlesex, and shall not so far as in the power of the said under-sheriff shall be, permit or suffer the said liberties, franchises, or any of them to be broken, infringed, or violated in anywise."

APPOINTMENTS.
Under-sheriff.

and with the said (*sheriff*), his executors and administrators, in the manner following, (that is to say) that the said (*under-sheriff*) shall and will duly and justly perform, execute and keep all such articles and matter whatsoever, which are contained, mentioned and expressed in the condition of the bond or recognisance, which the said (*sheriff*) with sureties hath or shall enter into and acknowledge, to the use of our Sovereign Lord the King, in his Majesty's court of exchequer, concerning the said office of sheriff of , save only such as do necessarily require the personal attendance of the said (*sheriff*).

Covenant by sheriff that obligations taken in his name shall be to use of under-sheriff.

AND the said (*sheriff*) for himself, his heirs, executors and administrators, doth covenant, promise and agree by these presents, to and with the said (*under-sheriff*), his executors and administrators, that all and every the covenants, obligation and obligations, taken or to be taken, in the name of the said (*sheriff*) as sheriff of the said county of , either of or from the several bailiffs in their offices or places, or of or from any person or persons arrested, or to be arrested, within the said county of , within the time aforesaid, by virtue of any writ, precept or mandate whatsoever, (so nevertheless as the said (*sheriff*) his heirs, executors and administrators, and his and their estates and effects shall be kept harmless and indemnified by the said (*under-sheriff and sureties*) or some or one of them, or of their executors or administrators, touching or concerning the said office of sheriff) shall be to the only proper use and behoof of the said (*under-sheriff*), his executors and administrators, for his and their better security and saving harmless of and from any damages, losses, troubles or expences, which shall or may grow, come or happen to him or them, by reason of the misdemeanors or negligences of any of the said bailiffs, or any other person or persons arrested or to be arrested for or by reason of his or their non-appearance, or otherwise howsoever or whatever.

And use the name of the sheriff in suing thereupon.

AND that the said (*under-sheriff*), his executors and administrators, performing the covenants and agreements herein contained, on his and their parts to be performed, shall and may at his and their own proper costs and charges, sue the said covenants and obligations, in the name of the said (*sheriff*), his executors or administrators, by virtue of these presents, and receive, take and enjoy, to the proper use and behoof of the said (*under-sheriff*), his executors, administrators and assigns, all such lawful benefit and recompense as shall arise or accrue, upon or by reason of the said covenants, obligations and suits, and every or any of them, in like manner and wise as he the said (*sheriff*), his executors or administrators, might lawfully and equitably have done, if these presents had not been made.

The sheriff being indemnified.

PRO-

VIDED nevertheless, and so that the said (*under-sheriff and sureties*) or some or one of them, their or his heirs, executors or administrators, do and shall at all times save harmless, and keep indemnified the said (*sheriff*), his executors and administrators, and his and their goods, chattels, lands, tenements and estates, of and from all and all manner of costs, damages and monies whatsoever, which may in anywise be awarded, adjudged, ordered, decreed, or recovered against the said (*sheriff*), his executors or administrators, by reason or on account of the putting in suit as aforesaid, any of the aforesaid covenants or obligations by the said (*under-sheriff*), his executors, administrators or assigns, in the name of the said (*sheriff*), his executors or administrators, and which they the said (*under-sheriff and sureties*) do hereby for themselves, their executors and administrators, jointly and severally covenant and agree to do. AND in such case as aforesaid, he the said (*sheriff*) as far as he lawfully may without any breach or infringement of his duty as sheriff of the said county of , doth covenant, promise and grant, that it shall and may be lawful to and for the said (*under-sheriff*) (he observing and performing the covenants and agreements herein contained on his part to be performed), to have and enjoy the said office of under-sheriff of the said county of , and to keep all and singular courts, towns'-leets and county courts at the times and places duly appointed for the same, according to the laws and statutes of the realm, and the customs and usages of the said county of , and that the said (*under-sheriff*) shall and may have and take all lawful fees, dues, profits and emoluments, which shall or may be lawfully had, gotten, received, or be payable unto the said (*sheriff*) by virtue or means of the said office of sheriff of the said county of , to the proper use of him the said (*under-sheriff*), without the contradiction or denial of the said (*sheriff*), his executors or administrators, and without any account thereof to be by him the said (*under-sheriff*), his executors or administrators, rendered or given. AND the said (*under-sheriff and sureties*) for themselves jointly and severally, and for every of them, do covenant, grant and agree to and with the said (*sheriff*), his executors and administrators, that they the said (*under-sheriff and sureties*) and every of them, their and every of their heirs, executors and administrators, shall and will from time to time and at all times from henceforth, save, keep harmless and indemnified, him the said (*sheriff*), his executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, troubles, fines, amerciaments, pains, penalties and forfeitures, for or

Saving sheriff harmless.

Under-sheriff may hold courts, take fees, &c.

Covenant by under-sheriff and sureties to indemnify sheriff.

APPOINTMENTS.
Under-sheriff.

on account of any defaults, matters and things whatsoever relating to the said office of sheriff of the said county of , excepting only what shall happen by the personal default, negligence or omission of him the said (*sheriff*).

Sheriff may return jurors.

PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed, notwithstanding any thing hereinbefore contained or implied, that it shall be lawful for the said (*sheriff*) at any time during the continuance of the said (*under-sheriff*) in his said office, to require him the said (*under-sheriff*), his deputy or deputies, clerk or clerks, to attend him the said (*sheriff*) with the freeholders' book, or book wherein the names of the freeholders of the said county of are entered or registered, in order that the said (*sheriff*) shall and may from time to time nominate and return such juror and jurors, inquest and inquests, to be returned and empannelled as jurors to inquire and serve in any of his Majesty's court or courts in Westminster, or other of his Majesty's court or courts, or before any commissioner or commissioners of oyer and terminer, gaol-delivery, commission of the peace, and all and every other person and persons having lawful authority to command the said (*sheriff*) as sheriff of the said county, to cause to come before them or any of them, any juror or jurors, inquest or inquests whatsoever, to serve for or in the said county of .

Under-sheriff will empannel accordingly.

AND the said (*under-sheriff and sureties*) do for themselves jointly and severally, and for their respective heirs, executors, and administrators, further covenant and promise to and with the said (*sheriff*) and his executors and administrators, by these presents, that he the said (*under-sheriff*) shall and will from time to time ingross, empannel, and return, or cause to be ingrossed, empannelled or returned, and summoned, such juror and jurors, inquest and inquests, so from time to time to be nominated and appointed to be returned by the said (*sheriff*), with his name subscribed to such return and none other, together with the process to him directed in that behalf; and shall and will at all times on reasonable notice to him given, attend with the said freeholders' book on the said (*sheriff*), and permit and suffer him to nominate and return such juror and jurors, inquest and inquests in manner aforesaid, anything in these presents contained to the contrary thereof notwithstanding.

Will attend with freeholders' book.

Will not empannel without sheriff's consent.

AND further that the said (*under-sheriff*) or any his deputy, clerks, or servants, shall not at any time or times during the time for which the said (*sheriff*) shall continue to be sheriff of the said county of , ingross, return, empannel, or cause to be ingrossed, returned, and empannelled, any inquest or jury for the trying any traitor or traitors, without the approbation of the said (*sheriff*) first had and obtained.

PROVIDED FURTHER, that it shall be lawful for the

APPOINTMENTS.

Under-sheriff.

said (*sheriff*) at any time or times, at his free will and pleasure, to prohibit and forbid the said (*under-sheriff*), his deputy or deputies, clerk or clerks, by any note in writing under his hand, from opening, sending, or returning any writ or writs, precept or mandate, which shall or may be directed to him the said (*sheriff*) or to the sheriff of aforesaid, for the electing of any member or members to serve in parliament in or for the said county, to the end the said (*sheriff*), may personally duly open, send, execute, and return the same; AND in such case the said (*under-sheriff and sureties*) do hereby jointly and severally covenant and promise to and with the said (*sheriff*), his executors and administrators, that he the said (*under-sheriff*) shall not open, send, execute, or return any such writ or writs, precept or mandate, without the special direction of the said (*sheriff*) first had and obtained in writing, whereby to hinder or prevent the said (*sheriff*) from opening, sending, returning or executing any such writ or writs in his own proper person. PROVIDED ALWAYS, and it is the true intent and meaning of the parties to these presents, that if the said (*under-sheriff*) shall not well, honestly, and carefully, demean and behave himself in the said office of under-sheriff of the said county of , in all business, matters, and things thereunto belonging, to the good liking and approbation of the said (*sheriff*), that then and in such case it shall and may be lawful and free to and for the said (*sheriff*) to displace the said (*under-sheriff*) out of the said office or place of under-sheriff aforesaid, from thenceforth for and during all the then residue of the said term or time of his shrievalty, any thing in these presents contained, or any other matter whatsoever to the contrary thereof in any wise notwithstanding. AND the said (*under-sheriff and sureties*) for themselves jointly and severally, and for the respective heirs, executors, and administrators of them and every of them, do covenant, promise, and agree to and with the said (*sheriff*), his executors and administrators, by these presents, that in case of such displacing the said (*under-sheriff*) as aforesaid, he the said (*under-sheriff*), his executors and administrators, shall and will deliver unto the said (*sheriff*), his executors or administrators, all and all manner of books and papers belonging or relating to the said office, and all writs, bail-bonds, process or mandates, and other things whatsoever relating to the said office which shall then be depending, or which shall remain or be in the hands, custody, or disposal of the said (*under-sheriff*), or any of his clerks, bailiffs, or servants, unexecuted or not returned, and every of them, whole, safe, and uncancelled; and shall and will also pay and deliver to him the said (*sheriff*) all such sum or sums of money,

Under-sheriff not to return election writs.

Sheriff may displace under-sheriff.

Under-sheriff on being displaced will deliver up writs, &c.

APPOINTMENTS.
Under-sheriff.

goods, and chattels, as shall be taken, paid, or levied in execution, or for the use of the king's majesty, his heirs or successors, by him the said (*under-sheriff*), by virtue of his said office of under-sheriff of the said county of , within two days next after request in such behalf made by the said (*sheriff*), his executors or administrators. AND LASTLY, the said (*under-sheriff and sureties*) for themselves jointly and severally, and for their respective executors and administrators, Do hereby covenant, promise, and grant to and with the said (*sheriff*), his executors and administrators, that the said (*under-sheriff*) shall and will bear, pay, and discharge all rewards and sums of money payable or ordered to be paid by the sheriff of , by virtue of any act or acts of parliament already made, or which at any time or times hereafter during the time aforesaid shall be made, for apprehending or convicting any person or persons for any felony or robbery committed on the king's highway, or for burglary, or feloniously breaking and entering any house in the day time, or for counterfeiting, clipping, and diminishing the coin of this kingdom, or for any other crime, offence, matter, or thing which already is or shall hereafter by any act or acts of parliament be imposed on the said sheriff of to pay, and shall and will indemnify the said (*sheriff*), his executors and administrators, of, from, and against the same and every of them. IN WITNESS, &c.

Under-sheriff will pay rewards on convictions.

APPRENTICESHIP.
Trade (retail).

No. CXIII.

Articles of Apprenticeship with a Retail Trader (1), *the Apprentice bound by his* Parent.

Variations where he binds *himself.*

ARTICLES OF AGREEMENT INDENTED made the day of

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(1) By the statute of 5 Eliz. c. 4. s. 31. it is enacted, "that no person or persons shall set up, occupy, use, or exercise any craft, mystery, or manual occupation *then* used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at the least, as an apprentice; nor set any person on work in such mystery, art or occupation, except he shall have been such apprentice, or else having served as an apprentice, shall become a journeyman, or be paid by the year." But this prohibition, it will be perceived, extends to such trades only as were in use at the time of passing the act; those therefore which were unknown in the reign of Elizabeth might be exercised without a previous apprenticeship; Pride v. Stubbs, 2 Campb. 397; and even as to these the act was held to extend to such only as required skill and experience; 8 Co. 258. And now by 54 Geo. III. c. 96. sec. 1. this part of the enactment of 5 Eliz. is repealed, and the same act (s. 2) repeals the "rules and regulations imposed by the stat. Eliz. respecting the qualifications of persons entitled to take, and to become apprentices, and the term of years for which such apprentices should be bound, and as to the mode of binding such apprentices" and declares that it shall thenceforth be lawful for any person to take or retain or become an apprentice without regard to the required provisions of the said act of Elizabeth. And that "all indentures, deeds and agreements entered into for that purpose" shall be as binding as before that act.

5 Eliz. c. 4.

Vid. repealed by 54 Geo. III. c. 96.

But the act does not affect the custom of London or of any other privileged city, town, corporation or company.—By some more recent acts, however, the usages of these places also are infringed upon in favour of officers, soldiers and sailors, see 56 Geo. III. c. 67. &c. *post.*; and various statutes have passed, and are still in force, relative to apprentices to particular trades, chiefly with the humane view of preserving the health and morals of the apprentice, where more especially endangered by the nature of the business—as 42 Geo. III. c. 48-73. relative to chimney-sweepers; 28 Geo. III. c. 73-59. *ib.* c. 66 and 60. *ib.* c. 5. relative to apprentices to manufacturers, see *post.* p. 421. n. (1).

Parish.

APPRENTICESHIP.

Trade (retail).

Recital of agreement for apprenticeship.

(1), in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN (*the father of the apprentice*), of, &c. and (*the apprentice*) (2) son of the said (*father*) of the one part, and (*the master*), of, &c. of the other part. WHEREAS the said (*master*) (3) hath agreed with the said (*father*) to take the said (*apprentice*) his son, as his apprentice for the term of seven years, to be taught and instructed in the trade or business of , in

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5 Eliz. c. 4.

By the same act of 5 Eliz. any householder of the age of 24 years, dwelling in any city or town *corporate* or market town, and exercising any mystery or manual occupation there, may during such residence and occupation retain the son of any freeman, not occupying husbandry, as an apprentice after the custom of *London*, for seven years at the least, so that his apprenticeship do not expire until he be of the age of twenty-four years —this term is however by the act of 18 Geo. 3. c. 47. restricted to the age of twenty-one years.

Articles need not, in all cases, be by indenture.

Since the above statute of 5 Eliz. it has generally been thought requisite that every apprenticeship should be by indenture, but the act in this respect (see sec. 25) relates solely to apprentices in husbandry. There are some cases, however, in which the articles of apprenticeship are required by statute to be by indenture, namely apprentices put out by the parish, 43 Eliz. c. 2.; apprentices in husbandry as before mentioned, and apprentices to owners of ships, fishers on the seas, gunners, and shipwrights, 5 Eliz. c. 5. s. 12.

Date.

(1) By 8 Ann. c. 9. s. 35. it is expressly required that articles of apprenticeship and clerkship should bear date the day they are executed.

Apprentice must be a party.

(2) It is necessary to the validity of the articles that the apprentice should be a party, as the binding will not otherwise constitute a valid apprenticeship; Chesterfield's Ca. 2 Salk. 479; Rex. v. Inhab. Cromford, 8 East. 25., Maul. 850.; Rex. v. Inhab. Ripon, 9 Eas. 295. 880: Rex v. Inhab. Armesby, 3 Barn. and Ald. 584.; but as he may nevertheless avoid the articles on his coming of age, Ex parte Davis, 5 Durnf. and E. 715, and as no action is maintainable against an infant for breach of covenant during his minority, unless by the custom of London; Moor, 134; Hall v. Chandler, 1 Mod. 271; it is usual to require the father, or some other friend, to be bound for the faithful discharge, by the apprentice, of his duty; 11 Co. 89. b.; Whitley v. Loftus, 8 Mod. 190; Branch v. Ewington, 2 Doug. 518.

Articles bind apprentice only during minority.

Apprentice may bind himself till 21.

(3) If the apprentice bind himself of his own authority (which he may do if above the age of 14, until he be of the age of 21; Ex parte Mary Ann Davis, 5 Durnf. and E. 715), Rex v. Inhabit. Arundell, 5 Maul. and Sel. 257. recite

Apprentice binding himself.

"WHEREAS the said (*apprentice*), being of the age of years, of his own choice and free will hath agreed to bind himself to the said (*master*) as his apprentice, for the term of years, to be taught and instructed in the trade or business of , under and subject to the terms and conditions hereinafter contained."

APPRENTICESHIP.
Trade (retail).

consideration of the sum of £ to be paid to the said (*master*) at the time of the execution of these presents, and subject to other the terms and agreements hereinafter contained. NOW THIS INDENTURE WITNESSETH (1), that in pursuance of the said agreement, and in consideration of the sum of £ (2) of lawful money of the united kingdom of Great Britain and Ireland, to the said (*master*) in hand well and truly paid by the said (*father*), at the time of the sealing and delivery of these presents, the receipt whereof the said (*master*) doth hereby acknowledge, HE the said (*master*) doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*father*), his executors and administrators, in the manner following, (that is to say) that he the said (*master*) shall and will, during the term of seven years, according to the best of his skill and knowledge, teach and instruct, or cause to be taught and instructed the said (*apprentice*) in the said trade or business of and all and every the matters and things whatsoever incident or relating thereto.

Covenant by master to instruct apprentice.

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(1) If the apprentice bind himself of his own authority, say, "NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter contained on the part of the said (*master*) to be performed and observed, HE the said (*apprentice*) doth hereby bind and place himself unto and with the said (*master*) as his apprentice, to be taught and instructed in the trade or business of for the term of years from the date hereof, during all which said time he the said (*apprentice*) shall and will well, truly and faithfully serve the said (*master*) as his apprentice, and diligently attend to the concerns and business of the said trade of , and shall not nor will do any wilful injury to the said (*master*), or suffer or permit the same to be done without acquainting the said (*master*) therewith, but shall and will acquit and demean himself as an honest and faithful apprentice ought to do. And in further pursuance of the said agreement, and in consideration of, &c." *as above.*

Apprentice binding himself.

(2) By 8 Ann. c. 9. s. 39. the premium paid with an apprentice, clerk, or servant must be truly set forth in the indentures; see Jackson v. Harwicke, 7 Durnf. and E. 121; but the insertion of a larger sum than that paid, if the duty be paid upon it, will not vitiate the articles; Rex v. Inhab. Keynsham, 5 East, 309; and although a smaller sum than that agreed to be paid be inserted expressly to avoid the stamp duty, as £19 19s. 6d. instead of £20 it is a sufficient compliance with the act, provided no more than the sum inserted be actually paid; Shepherd v. Hall, 3 Campb. 180.

Premium paid with apprentice must be stated in the articles.

APPRENTICESHIP.

Trade (retail).

And provide him with board.

[AND (1) also shall and will during the said term, find and provide (2) the said (*apprentice*) with suitable and sufficient diet and lodging in the house of him the said (*master*), in a like and equal manner with the rest of his family, he the said (*apprentice*) at all times taking his meals with the said (*master*) and his family, and not with the menial or domestic servants of the said (*master*)] (3). AND in consideration (4) of the covenants and agreements hereinbefore contained on the part of the said master, HE the said (*father*) HATH placed and bounden, and by these presents DOTH place and bind the said (*apprentice*) unto and with the said (*master*) for the said term or period of years (5), to be computed from the date of these presents; and doth hereby for himself, his heirs, executors and administrators, covenant, promise and declare, and the said (*apprentice*) doth hereby freely and voluntarily consent and agree to and with the said (*master*), his executors and administrators, that he the said (*apprentice*) shall

Covenant by father for son's due service.

Apprentice boarding himself.

(1) If the apprentice be not to board with the master, the words within brackets must be omitted.

Master to allow apprentice for his board.

(2) If the master is to allow the apprentice for his board, say,

"AND also shall and will well and truly pay or cause to be paid unto the said (*apprentice*) during the said term, or during so much thereof as he shall continue his apprentice as aforesaid, the clear yearly sum of £ , in lieu and full satisfaction of the board and lodging of the said (*apprentice*)."

Return of part of premium on death of apprentice.

(3) If it be agreed that part of the premium shall be returned on the death of the apprentice, say,

"AND moreover, that in case the said (*apprentice*) shall happen to depart this life at any time within twelve calendar months, to be accounted from the date of these presents, he, the said (*master*), his executors or administrators, shall and will return and pay unto the said (*father*), his executors, administrators and assigns, the sum of £ being one part of the said premium or sum of £ so paid to the said (*master*) with him the said (*apprentice*) as aforesaid; and if he shall depart this life within the term of years from the date of these presents, then the sum of £ part and portion of the said premium."

Apprentice binding himself.

(4) If the apprentice bind himself of his own authority, and be under the age of twenty-one years, these covenants (unless by the custom of London) will be ineffective, and may therefore be omitted.

Apprenticeship to expire at age of twenty-one.

(5) See *ante*, p. 399. n (1). The father should take care that the period will expire at or before his son's attaining the age of twenty-one years, for if the apprentice come of age before the expiration of the seven years and absent himself from service, the father will, notwithstanding, be liable under his covenants; Cuming v. Hill, 3 Barn. and Ald. 59.

APPRENTICESHIP.

Trade (retail).

and will, during all and every part of the said term of seven years, well, truly and faithfully serve the said (*master*) as an apprentice in the said trade and business of , and diligently attend to the business and concerns thereof from the hour of nine o'clock in the morning (1) until the hour of seven o'clock in the evening (2); and shall not nor will do any wilful damage or injury to the said (*master*), nor knowingly suffer the same to be done without acquainting him the said (*master*) therewith; but shall and will, in all respects, acquit and demean himself as an honest and faithful apprentice ought to do. AND it is hereby mutally agreed and declared by and between the said parties to these presents, that in case the said (*master*) shall happen to die before the end of the apprenticeship of the said (*apprentice*), then and in such case, the executors and administrators of him the said (*master*), shall and will, as soon as may be after his decease, find and provide (3) a new and other proper master, following the trade or business of , and at their own cost and charges, assign and turn over the said (*apprentice*) to such new master for the residue which shall be then to come and unexpired of the term of his apprenticeship, upon the same terms or upon terms equally advantageous to the said (*apprentice*) as are contained in these presents, and in default thereof, shall and will pay or cause to be paid unto the said (*father*), his executors, administrators or assigns, the sum of £ for every year of the said term of seven years hereinbefore mentioned, which shall be then to come and unexpired (4). AND lastly, for the true performance and observance of

If master die, executors to provide another master.

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(1) Where a person agrees to give up the whole of his time and attention to the service of his employer, he is entitled to the whole of such time and attention, unless it be otherwise agreed upon; Thompson v. Havelock, 1 Campb. 527.

Master entitled to the whole of apprentice's time.

(2) If it be agreed that the apprentice shall not be boarded with the master, add,

Apprentice boarding himself.

"SAVE and except an interval of two hours to be allowed the said (*apprentice*) for dinner and relaxation."

(3) On the decease of the master, his executors are obliged by the custom of London to provide and place the apprentice with another for the remainder of his time; Peck's Ca. 1. Salk. 66.; and he is not compellable to serve the executor himself of such master; Baxter v. Burfield, 2 Stra. 1266; Pearce v. Chamberlain, 2 Ves. 36.

Representatives of master must (in London) provide a new master.

(4) If the business is of a nature easily to be acquired, and may be followed without any statutable requisition for a given period of previous service, add,

"AND the said (*master*) doth hereby, in manner and form afore-

Apprentice to be at liberty to

APPRENTICESHIP.

Trade (retail).

Nomine pœnæ.

the several covenants and agreements herein contained on the part of the said (*father*) and (*master*) respectively, and their respective executors and administrators, to be performed and observed, each of them the said (*father*) and (*master*) doth bind himself, his heirs, executors and administrators, unto the other of them, his executors, administrators, and assigns, in the penal sum of £ (1) of lawful money of the united kingdom of Great Britain and Ireland,

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leave master at the end of years.

said, further covenant, promise and agree, that he the said (*master*), his executors and administrators, shall and will permit and suffer the said (*apprentice*), if he shall require the same in writing under his hand, freely to depart from and leave the service of him the said (*master*), his executors and administrators, at the expiration of the first three years of the said term of seven years hereinbefore mentioned, and thenceforth to use and employ the remaining four years of the said term to and for his own use, benefit and advantage, as and where he shall think proper, without any hindrance and denial of him the said (*master*), his executors or administrators, or any account to be required by or given to him or them for the gains or earnings of him the said (*apprentice*), any thing herein contained, or any law or usage to the contrary thereof in any wise notwithstanding."

Without which clause the master will be entitled to his earnings, and this agreement will not preclude the apprentice from exercising his trade, as the act of Eliz. is satisfied by his following the trade in any capacity during the time required by the act.

Master allowed to discharge apprentice for misconduct.

If it be agreed that the master shall have the power of discharging the apprentice in case of misbehaviour, add,

"AND it is hereby further declared and agreed, by and between the said parties hereto, and the said (*father*) and (*apprentice*) do hereby respectively assent, that in case the said (*apprentice*) shall, at any time during the said term, be wilfully disobedient to the lawful orders or commands of the said (*master*), or be slothful and negligent, or shall otherwise grossly misbehave himself towards the said (*master*) or his family, then and in any or either of the said cases, it shall be lawful for the said (*master*), and he is hereby authorized and empowered, to put away and discharge the said (*apprentice*) from his said service; and in such case shall repay or cause to be repaid unto the said (*father*), his executors or administrators, the sum of £ for every year of the said term of seven years hereinbefore mentioned, which shall be then to come and unexpired."

Penalty.

(1) As to penal sums see *ante*, p. 65. n. (3).

firmly by these presents, as or by way of ascertained or liquidated damages. IN WITNESS, &c. (*All parties* (1)).

APPRENTICESHIP. *Trade (retail).*

(1) Indentures of apprenticeship (unless in the case of apprentices put out by the parish) must be signed by the apprentice, although a minor, and if a minor his father should be a party; King v. Armesly, 3 Maul. and Sel. 584.

Signature.

*** By the custom of London, and of some other places, it is necessary that articles of apprenticeship should be enrolled, and this custom has been holden to be good, although founded only on a bye law of the corporation; Rex v. Marshall, 2 Durnf. and E. 2; Rex v. Coopers' Company, 7 *ib.* 549.

Articles of apprenticeship by the custom of London, must be enrolled.

By the act 55 Geo. III. c. 184. (and 3. Geo. IV. c. 11.) indentures or other instruments for the binding of apprentices or clerks (except to attornies, six clerks, or proctors, for which see *post.*) to learn any profession or trade, and not put out by the parish, shall be impressed with the following stamp duties. If the premium paid be under £30—£1; if £30 and under £50—£2; if £50 and under £100—£3; if £100 and under £200—£6; if £200 and under £300—£12; if £300 and under £400—£20; if £400 and under £500—£25; if £500 and under £600—£30; if £600 and under £800—£40; if £800 and under £1000—£50; if £1000 and upwards—£60; and when no premium is given—£1, if the instrument contain less than 1080 words; and if more, £1 15*s*.

Stamp.

And if there be two parts of the indenture or instrument, one shall bear the above mentioned progressive duty (and which shall belong to the apprentice), and the other a duty of £1 15*s*. only.

Apothecary, &c.

No. CXIV.

*Articles of Apprenticeship (1) with an Apothecary (2) and Surgeon.

ARTICLES of agreement indented, made, and entered into the day of in the year of our Lord 18 . BETWEEN (*the master*) of, &c. surgeon, apothecary and man-midwife, of the first part, (*the apprentice*) of, &c. son of of, &c. of the second part, and (*father or guardian*) of, &c. father (*or* guardian) of the said (*apprentice*) of the third part. WHEREAS the said (*master*) hath agreed to take the said (*apprentice*) as his apprentice or pupil, on the terms and conditions hereinafter mentioned, for the purpose of his being taught the arts of surgery and medicine. NOW WITNESS THESE PRESENTS, that he the said (*apprentice*) by and with the consent of the said (*father or guardian*) testified by his being party hereto, doth bind himself to the said (*master*) as an apprentice, to serve in and be taught the arts, mysteries or professions of a sur-

Apprentice binds himself.

(1) See notes, &c. to No. CXIII. *ante*, p. 399.

55 Geo. III. c. 194. (2) It is enacted by stat. 55 Geo. 3. c. 194. that no person shall be admitted to any examination for a certificate of his qualification to act or practise as an apothecary, unless he shall (among other things by the said act required) produce proof to the court of examiners of his having served an apprenticeship of not less than five years to an apothecary: and by the 6 Geo. 4. c. 133. after reciting the last mentioned act, and

6 Geo. IV. c. 133. that many persons who had served an apprenticeship for the like period to surgeons, and had received a full and competent medical education to enable them to practise as apothecaries, but that the court of examiners had not any power to examine such persons; it is enacted, that the said court of examiners might from thenceforth examine such persons as to their fitness for, or qualification to act as apothecaries, who shall produce proof of having served an apprenticeship of not less than five years to a member of the Royal College of Surgeons in London, or to a member of the Royal College of Surgeons in Edinburgh, or to a member of the Royal College of Surgeons in Dublin, or to a surgeon in his Majesty's army or navy, in like manner as by the said act is provided with regard to persons who shall have served an apprenticeship of not less than five years to an apothecary.

APPRENTICESHIP.

Apothecary, &c.

geon, apothecary and man-midwife, from the day of the date hereof, for and during and until the full end and term of five years to be thence next ensuing, and doth hereby promise and engage that he the said (*apprentice*), during the whole of the said term, shall and will well and truly serve the said (*master*), his executors, administrators, and assigns, in all things relative to his arts, businesses, or professions aforesaid, and shall not nor will do any damage, hurt, or injury to him or them therein, or otherwise, nor knowingly suffer the same to be done by any other person or persons whatsoever, without giving speedy notice thereof, and shall and will at all times and in all respects and things act and conduct himself as an honest and faithful apprentice ought to do. AND in consideration of the said apprenticeship, and of the covenants and agreements aforesaid, and also of the sum of £ of lawful current money of the United Kingdom of Great Britain and Ireland, to him in hand well and truly paid by the said (*father or guardian*) at or before the signing or sealing of these presents, the receipt whereof the said (*master*) doth hereby acknowledge, HE the said (*master*) DOTH hereby, for himself, his executors and administrators, covenant, promise, and agree to and with the said (*apprentice*) and (*father or guardian*) respectively, and their respective executors, administrators, and assigns, by these presents, in the manner as follows, (that is to say) that he the said (*master*), according to the best of his skill and knowledge, shall and will during the said term, teach and instruct, or cause to be taught and instructed, him the said (*apprentice*), in the arts, mysteries, businesses, or professions of a surgeon, apothecary, accoucheur or man-midwife, and in all things whatsoever incident or belonging to the same, or to any or either of them, as now or hereafter practised or to be practised by him the said (*master*). AND also provide and allow to and for him the said (*apprentice*) good and sufficient meat and drink at the table of him the said (*master*), and lodging fit for an apprentice or pupil of the said (*master*); AND also, in case of sickness or accident, will provide and procure proper physic, medicine, diet, and attendance for him the said (*apprentice*), without charge or expence to him the said (*apprentice*), or the said (*father or guardian*), save only and except as hereinafter is mentioned. AND further, that he the said (*master*) shall and will permit and allow the said (*apprentice*), during the last two years of the said term to walk, resort to, and attend days in every week, or oftener if requisite, the hospital of at or any other hospital or hospitals, or place or places of lectures upon or for physic, surgery, medicine, or

Will be faithful.

Covenant by master to teach, &c.

And find lodging and board.

As to sickness.

Apprentice to attend lectures, &c.

APPRENTICESHIP.
Apothecary, &c.

chemistry, in or for his further and better instruction and improvement in the said arts, businesses, or professions, or any or either of them. AND the said *(father or guardian)* doth hereby, for himself, his executors and administrators, covenant, declare, and engage, to and with the said (*master*), his executors, administrators, and assigns, in the manner following, (that is to say) that he the said (*apprentice*) shall and will honestly and faithfully serve his said apprenticeship during the term aforesaid, unto and with him the said (*master*), in the manner aforesaid, in case the said (*master*) and (*apprentice*) shall both so long live: AND that he the said *(father or guardian)*, his executors or administrators, shall and will during the said term, at his and their own cost and charge, find and provide him the said (*apprentice*) with all manner of clothing, apparel, and linen fit for an apprentice or pupil of him the said (*master*), and cause the same, at his and their own expence, to be from time to time washed, cleaned, and repaired, as occasion may require: AND likewise, in case of the sickness, hurt, or accident of him the said (*apprentice*) shall and will pay and discharge all fees to physicians or surgeons for advice or attendance, and also reasonable charges for medicines exceeding at any one or more time or times during the continuance of any such sickness the sum of £ : AND further, that in case the said (*apprentice*) shall at any time during his said apprenticeship wilfully embezzle, spoil, or destroy any of the drugs, medicine, goods, money, or other property of him the said (*master*), he the said *(father or guardian)*, his executors or administrators, shall and will, within one calendar month after the same shall have been made known, and satisfactorily proved to him or them, pay, satisfy, and make good unto him the said (*master*), his executors, administrators, and assigns, all such drugs, medicines, goods, monies, and property, in and for the full value and amount thereof. AND it is hereby mutually agreed and declared by and between the parties to these presents, that in case the said (*master*) shall happen to depart this life before the expiration of the said term of five years, the executors or administrators of him the said (*master*) shall and will, within the space of one calendar month next thereafter, find and provide another skilful and proper master practising in the same or like businesses or professions, and assign or turn over him the said (*apprentice*) to such new or other master for the residue of the said term which shall be then to come, upon and subject to the same or like terms and conditions in all things, as are hereinbefore provided or expressed in relation to the said apprenticeship, and in default thereof, the executors or administrators of him the

Father or guardian covenants for fidelity, &c.

And to provide him with clothes, &c.

And fees to physicians.

Make good embezzlements, &c.

Provision for death of master.

said (*master*) shall and will repay, or cause to be repaid, at the end of the said space of one calendar month, unto him the said (*apprentice*), his executors, administrators, or assigns, or unto him the said (*father or guardian*) such sum of money, or the said premium or sum of £ as shall bear a just and equal proportion to the time which shall be then to come of the said term of his said apprenticeship. AND LASTLY, for the true performance and observance of the several covenants and agreements hereinbefore contained or expressed by or on the part of them the said (*master and father or guardian*) respectively, to be performed or observed, according to the true intent and meaning of the same respectively, each of them the said parties doth bind himself, his executors and administrators, unto the other of them, his executors, administrators, and assigns, in the sum of £ of such lawful and current money as aforesaid, firmly by these presents, as or by way of liquidated and ascertained damages (1). IN WITNESS, &c.

Penal sum.

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(1) See *ante*, p. 65, n. 3. and p. 70.

APPRENTICESHIP, *Architect, &c.*

No. CXV.

Articles of Apprenticeship (1) *with an* Architect *and Surveyor, the apprentice binding himself* (2).

THIS INDENTURE, made the day of , in the year of our Lord 18 . BETWEEN (*the apprentice*) of, &c. of the one part, and (*the master*) of, &c. of , architect, of the other part,

Apprentice binds himself.

WITNESSETH, that the said (*apprentice*) of his own free will and accord, testified by his sealing and delivering these presents, hath put and bound himself apprentice or pupil to the said (*architect*) to be taught and instructed in the several trades, businesses, or employments of an architect and a surveyor, from the day of the date of these presents, unto the full end and term of four years from thence next ensuing. AND in consideration of the sum of £ , of good and lawful money of the united kingdom of Great Britain and Ireland, to him in hand well and truly paid, by the said (*apprentice*) at or before the sealing and delivering of these presents, the receipt whereof the said (*architect*) doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit and discharge the said (*apprentice*), his executors, administrators and assigns, by these presents he the said (*architect*) HATH agreed to take and accept, and by these presents DOTH agree to accept and take the said (*apprentice*) as his apprentice, during the said term. AND the said (*apprentice*) doth hereby covenant, promise, and agree to and with the said (*architect*), his executors and administrators, that he, the said (*apprentice*) shall and will, during all the said term of four years, well and truly serve the said (*architect*) as an apprentice in the said trades or businesses of an architect and a surveyor, diligently attending to his business and concerns from the hour of nine o'clock in the morning, until the hour of seven o'clock in the evening, save and except an interval of two hours, which is to be allowed the said (*apprentice*) to dine; doing no damage or injury to his said

Covenant by apprentice to serve.

(1) See notes and variations, to No. CXIII. *ante*, p. 399.

(2) If the apprentice is bound by or with the consent of his father or guardian, see *ante*, *ubi supra*, and No. CXIV. p. 406.

master, nor knowingly suffering the same to be done without acquainting his said master therewith; but shall and will in all respects acquit and demean himself as an honest and faithful apprentice ought to do. AND the said (*architect*) doth hereby for himself, his executors and administrators, covenant, promise, and agree to and with the said (*apprentice*), his executors, administrators and assigns, in the manner following, (that is to say) that he the said (*architect*) according to the best of his power, skill and knowledge, shall and will, during the said term of years, teach and instruct, or cause to be taught and instructed, the said (*apprentice*) in the two several trades, businesses, or employments of an architect and a surveyor, and in all things whatsoever, incident or belonging thereto, in such manner as he the said (*architect*) now, or at any time hereafter, during the said term, shall use or practise the same. AND further, that he the said (*architect*) shall and will well and truly pay, or cause to be paid, unto the said (*apprentice*) or his assigns, during the said term of years, or during so much thereof as the said (*apprentice*) shall continue his apprentice, as aforesaid, the several sums of money, and payable at the several times, hereinafter mentioned, in lieu and full satisfaction of the board and lodging of the said (*apprentice*) during the said term, (that is to say) the sum of thirty-five pounds of lawful money of Great Britain, for the first year of the said term; the sum of forty pounds of like lawful money, for the second year of the said term; the sum of forty-five pounds of like lawful money, for the third year of the said term; and the sum of fifty pounds, for the fourth and last year of the said term (unless the said apprenticeship shall be sooner determined at such request of the said (*apprentice*) as is hereinafter mentioned, in which case the said sum of fifty pounds last mentioned shall not be paid or payable), together with a proportionable part of either of the said sums which may happen to be due at any sooner determination of the said apprenticeship, to be computed from the last quarterly day of payment thereof, up to the day of such determination; the said several and respective sums of thirty-five pounds, forty pounds, forty-five pounds, and fifty pounds, to be paid and payable by four equal quarterly payments, on the twenty-fifth day of December, the twenty-fifth day of March, the twenty-fourth day of June, and twenty-ninth day of September in every year, the first payment thereof (or of such proportional part of the said sum of thirty-five pounds, as shall be then due) to begin and to be made on the twenty-fifth day of December, now next ensuing; and every of them to be free and clear of all manner of deductions whatsoever; which said several and respective sums of thirty-five pounds,

Covenant by master to instruct.

And pay an allowance in lieu of board.

APPRENTICESHIP. *Architect, &c.*

forty pounds, forty-five pounds, and fifty pounds, the said (*apprentice*) doth hereby for himself, his executors, administrators and assigns, covenant and agree to and with the said (*architect*) his executors and administrators, to take and accept in lieu of, and in full satisfaction for, his board and lodging, during the said term. AND moreover the said (*architect*) doth hereby for himself, his executors and administrators, covenant, promise, and agree to and with the said (*apprentice*), his executors, administrators and assigns, that if the said (*apprentice*) shall happen to depart this life at any time within twelve calendar months, to be accounted from the date of these presents, he the said (*architect*), his executors or administrators, shall and will return and pay unto the executors, administrators or assigns of the said (*apprentice*) fifty pounds of the said sum of one hundred pounds, so paid by him the said (*apprentice*) as aforesaid. AND further that he the said (*architect*), his executors or administrators, shall not nor will require the said (*apprentice*) to attend to the business or concerns of the said (*architect*), his executors, administrators or assigns, any more than eight hours in one and the same day, namely, from the hour of nine o'clock in the morning, until the hour of seven o'clock in the afternoon, as is hereinbefore expressed, (with the exception of two hours for meals) unless the said (*apprentice*) shall unavoidably be longer engaged about the proper business of the said (*architect*) out of his office or accounting-house; and in case the said (*apprentice*) shall be so employed, it is hereby declared and agreed, that all extraordinary expences which he shall necessarily be put to on such account, shall be borne and paid by the said (*architect*), his executors, administrators or assigns. AND the said (*architect*) doth hereby for himself, his executors and administrators, further expressly covenant, promise, and declare to and with the said (*apprentice*), his executors and administrators, that he will permit and suffer the said (*apprentice*), if he shall think fit and require it, freely to depart from and leave the service of him the said (*architect*), his executors, administrators or assigns, at the expiration of the term of years of the said term of years hereinbefore mentioned, and use and employ the remaining year of his said apprenticeship to his own benefit and advantage, when and as he shall think fit, without any hindrance or molestation of or by the said (*architect*), his executors, administrators or assigns, but upon express condition, nevertheless, that the said (*apprentice*) shall not in that case claim any part of the said sum of fifty pounds hereinbefore stipulated to be paid by the said (*architect*) for the last year of his apprenticeship, these presents, or any thing herein contained to the contrary thereof in any-

In case of apprentice's death master will return a part of premium.

Master will not require more than a certain number of hours' attendance.

Master will permit apprentice to quit at the end of years.

APPRENTICESHIP.
Architect, &c.

wise notwithstanding. AND it is hereby mutually agreed and declared, by and between the parties to these presents, that in case the said (*architect*) shall happen to die before the end of the apprenticeship of the said (*apprentice*), that then and in such case the executors or administrators of him the said (*architect*) shall and will, as soon as may be after his death, find and provide a new and other proper master, being an architect and a surveyor, and at their own charge, and without delay, turn over the said (*apprentice*) to such new master, for the residue which shall be then unexpired of the term of his apprenticeship, upon the same terms, or upon terms equally advantageous to the said (*apprentice*) as are contained in this indenture; and in default of so doing, they the said executors or administrators of the said (*architect*) shall and will pay unto the said (*apprentice*), his executors, administrators or assigns, the sum of twenty pounds for each and every year of the said term of years, which shall so remain unexpired. AND lastly, for the true performance of the several covenants and agreements hereinbefore mentioned and contained on the respective parts of each of them the said (*apprentice*) and (*architect*), their executors and administrators, to be taught, served, paid, done, and performed, in the manner hereinbefore mentioned, and according to the true intent and meaning of these presents, they the said (*apprentice*) and (*architect*) do bind themselves unto each other, and unto the executors, administrators and assigns of each other, in the sum of one hundred pounds of lawful money of Great Britain, firmly by these presents, by way of ascertained or liquidated damages (1). IN WITNESS, &c.

If master die executors will provide a new master.

Penalty for non-performance of agreements.

(1) See *ante*, p. 65. n. (3)—but if the apprentice be under age this penalty should, as to him, be omitted as unavailable. Penalty.

APPRENTICESHIP.

Chemist.

No. CXVI.

*Articles of Apprenticeship (1) with a Chemist or Druggist.

ARTICLES of agreement, indented, made and concluded upon, this day of , in the year of our Lord 18 . BETWEEN (*master*) of, &c. chemist and druggist of the first part, (*father*) of, &c. of the second part, and (*apprentice*) of, &c. son of the said (*father*) of the third part, as follows: (that is to say) the said (*master*), in consideration of the sum of £ , of lawful money of the united kingdom of Great Britain and Ireland, to him in hand well and truly paid by the said (*father*) at or before the sealing and delivery of these presents, the receipt whereof he the said (*master*) doth hereby acknowledge, and of and from the same doth acquit, release, and for ever discharge the said (*father*), his executors, administrators and assigns, by these presents; and also in consideration of the service of the said (*apprentice*) to be done and performed to and for the said (*master*), and of the covenants and agreements hereinafter entered into by the said (*father*) and (*apprentice*), he the said (*master*) doth, at the instance of the said (*father*), and by and with the consent of the said (*apprentice*) (testified by his being a party to and signing these presents), agree to take and receive him the said (*apprentice*) as his apprentice from the day of the date hereof, for and during the term of years now next ensuing. AND he the said (*apprentice*) HATH put and placed, and by these presents DOTH, by and with the consent of the said (*father*) (testified by his being a party to and signing and sealing these presents), put and place himself to and with the said (*master*) to serve him as his apprentice from the date hereof for the said term of years, and doth hereby promise and engage, that during all the said time he the said (*apprentice*) will faithfully, diligently, and honestly

Consideration.

Apprentice binds himself with consent of parent.

(1) See notes, &c. to No. CXIII. *ante*, p. 399—also *ante*, p. 406. n. (2).

APPRENTICESHIP. *Chemist.*

serve him the said (*master*), and obey and perform his lawful commands, and shall not nor will absent himself from the service of his said master without his leave during the said term, nor unduly nor negligently spend or waste any of his said master's monies, effects, goods or chattels which shall be in the custody of or entrusted with him by the said (*master*), or which shall be delivered or put into the hands of the said (*apprentice*), or come to his hands by the orders or appointment of the said (*master*), or in any other manner on his account, during the said term, but shall and will well, truly and forthwith account for, deliver, and pay to the said (*master*), his executors, administrators, or assigns, all and every such sum and sums of money and other things which he the said (*apprentice*) shall receive, have, or be intrusted with, or which shall come to his hands or possession for or on account of his said master. AND also shall and will in all things demean and behave himself as a good, true, and faithful apprentice during the said term in all other matters and things whatsoever. AND the said (*master*), in consideration of the aforesaid premises, doth hereby covenant and agree to and with the said (*father*) and also the said (*apprentice*) in the manner following, (that is to say) that he the said (*master*) shall and will during the said term of years, use his best endeavours to teach and instruct, or cause to be taught and instructed, the said (*apprentice*) as his apprentice in the said trades or businesses of a chemist and druggist, and in all things incident thereto. AND also shall find and provide for him the said (*apprentice*) good and sufficient meat, drink and lodging, during the continuance of him the said (*apprentice*) in the service of him the said (*master*). AND lastly, the said (*father*) doth hereby for himself, his heirs, executors and administrators, covenant, promise, and agree to and with the said (*master*), his executors and administrators, that the said (*apprentice*) shall and will faithfully, diligently and honestly serve the said (*master*) as his apprentice during the said term. AND further, that he the said (*father*), his executors or administrators, shall and will at his own expense find and provide or cause to be found and provided to and for the said (*apprentice*) good, proper, and sufficient clothes, washing, pocket money, medicines and medical attendance, and all other necessaries (except as aforesaid) during the said term (1). IN WITNESS, &c.

And promises to serve.

And duly account.

And well demean himself.

Master covenants to instruct.

And find meat, &c.

Covenant by father for son's fidelity, &c.

And to find clothes, &c.

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(1) See other clauses, &c. *ante*, No. CXIII. in *notes* and No. CXV. in *margin*. Other clauses.

APPRENTICESHIP.

Chimney-sweep.

No. CXVII.

An Indenture of Apprenticeship with a Chimney-sweeper (1).

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN (*churchwardens and overseers*) being churchwardens and overseers of the poor of the parish of in the county of [*or* the father or next friend of the boy *as the case may be*] of the one part, and (*master or mistress*) of, &c. chimney-sweeper, of the other part. WITNESSETH, that they the said churchwardens and overseers of the poor [*or* the father, &c. *as the case may be*] by and with the consent and approbation of (and two of his majesty's justices of the peace acting in and for the said county) [*or* riding, city, town, borough, or division, *as the case may be*] of, &c. signified as hereunder written, HAVE [*or* HATH] put and bound, and by these presents DO [*or* DOTH] apprentice a poor boy of the said parish [*or* township or place] being of the age of years (2) to be apprentice to the said (*master*), (he being his first [*or* second, &c. *as the case may be* (3)] apprentice), to learn the trade, business, art, and mystery of a chimney-sweeper, and with him [*or* her] to dwell, remain, and serve, from the day of the date of these presents for and during the term of

WITNESS. Churchwardens, &c. bind apprentice, for years.

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28 Geo. III. c. 48.

(1) By 28 Geo. 3. c. 48. secc. 1. churchwardens and overseers of the poor, with the consent of two justices specified under their hands, are authorized to bind any boy of eight years of age or upwards, who or whose parents are chargeable to the parish, or who shall beg alms, or with the parents' consent, to be apprentice to a chimney-sweeper till he attains the age of sixteen; and by secc. 3. the above form is declared to be effectual.

(2) By sec. 2. of the above act it is required that the age of the apprentice should be inserted in the indenture.

(3) Sec. 8. prohibits any master from having more than six apprentices at one time.

years (1), from hence next ensuing fully to be complete and ended; during all which time he the said (*apprentice*) his said master [*or* mistress] shall faithfully serve and obey, his [*or* her] secrets keep, and his [*or* her] lawful commands every where gladly do and perform; he shall not haunt alehouses or gaming houses, nor absent himself from the service of his said master [*or* mistress] day or night without his [*or* her] leave, but in all things as a faithful apprentice shall behave himself towards his said master [*or* mistress], and all his [*or* her] family during the said term. AND the said (*master or mistress*) in consideration of the good will which he [*or* she] hath and beareth towards the said apprentice, and of the faithful service so to be performed by him, DOTH hereby covenant, promise, and agree with the said churchwardens and overseers of the poor [*or* the said father, &c. *as the case may be*] that he [*or* she] the said (*master or mistress*) his [*or* her] said apprentice in the art or mystery of a chimney-sweeper, which he [*or* she] now useth, shall and will teach and instruct, or cause to be taught and instructed in the best manner that he [*or* she] can, and shall and will provide and allow unto the said apprentice during all the said term, competent and sufficient meat, drink, washing, lodging, apparel, and all other things necessary for the said apprentice: And that the said (*master or mistress*), his [*or* her] executors, administrators, or assigns, shall not nor will assign over this present indenture, or the apprentice to be bound thereby, without the consent and approbation in writing of two or more such justices of the peace, to be signified according to the form of the approbation hereunder written. AND WHEREAS, from the nature of the business or employment of a chimney-sweeper, it is necessary for the boys employed in climbing to have a dress particularly suited to that purpose, which dress is only fit for that part of the occupation; the said (*master or mistress*) doth hereby also covenant, promise, and agree, to and with the said churchwardens and overseers of the poor [*or* the said father, &c. *as the case may be*], to find and allow such suitable dress for the said apprentice as often as need or occasion shall be and require, and provide for and deliver to the said apprentice once in every year at least during the term aforesaid, over and above the said dress proper for climbing, one whole and complete suit of clothing, with suitable linen, stockings, hats, and shoes: AND further, that the said (*master or mistress*) shall and will, at least once in every week,

Covenant by master or mistress to teach, maintain, &c.

Will not assign over apprentice without consent of two justices of the peace.

Will provide apprentice with working suit.

Will keep apprentice clean, &c.

(1) See *ante*, p. 399. n. (1).

APPRENTICESHIP.
Chimney-sweep.

cause the said apprentice to be thoroughly washed and cleansed from soot and dirt, and shall and will require the said apprentice to attend the public worship of God on the sabbath day, and permit and allow him to receive the benefit of any other religious instruction; and that the said apprentice shall not wear his sweeping dress on that day: AND that the said (*master or mistress*) shall not nor will compel or oblige the said apprentice to call the streets or any other place before seven of the clock in the morning, nor after twelve of the clock at noon, between *Michaelmas* and *Lady Day*; nor before five of the clock in the morning, nor after twelve of the clock at noon between *Lady Day* and *Michaelmas*: AND that the said (*master or mistress*) shall not nor will at any time during the said term, let out his [*or* her] said apprentice for hire by the day, night, or otherwise, to any person or persons exercising or using the said trade; nor shall the said (*master or mistress*), or any person or persons whomsoever, by his [*or* her] directions, require or force him the said apprentice to climb or go up any chimney which shall be actually on fire, nor make use of any violent or improper means to force him to climb or go up any such chimney, but shall in all things treat his [*or* her] said apprentice with as much humanity and care as the nature of the employment of a chimney-sweeper will admit of. IN WITNESS, &c.

Will not let out apprentice to hire, &c.

The following is the form of the approbation of the Justices, as pointed out by the Act.

We the above named (*justices*) two of his Majesty's justices of the peace, acting in and for the county [*or* riding, city, town, borough, division, *as the case may be*] having inspected and examined the above named (*apprentice to be placed out or assigned over*) do hereby consent to and approve of his being bound [*or* assigned over] as an apprentice to the above named (*master or mistress*) according to the terms and stipulations in the above written indenture.

No. CXVIII.

An Indenture of Apprenticeship (1) *with a* Husbandman, *Farmer and Grazier* (2).

THIS INDENTURE made the day of in the year of our Lord 18 . WITNESSETH, that (*apprentice*) of, &c. being above the age of ten years, *i. e.* of the age of years or thereabouts(3), HATH of his own free will and accord placed and bound, and by these presents doth place and bind himself (4) apprentice to (*master*) of, &c. farmer, grazier, and husbandman, for the term of years from the date hereof, with a premium or sum of £ , to be taught and instructed in the art, business, science, or employment of a farmer and grazier, and all matters and things relative to husbandry affairs, in the best and most approved manner as followed or practised by him the said (*master*) and other modern farmers, graziers, and husbandmen. And doth hereby promise and agree to live with and continue and serve him the said (*master*) as an apprentice from the day of now next coming, until the expiration of the said term, and during all the said term or time well and faithfully to conduct and demean himself, and be just and true to him the said (*master*), his executors, administrators, and assigns, as his master, in all things, and ever willingly his lawful orders and directions observe and fulfil to the best of his abilities and power. AND in con-

Apprentice binds himself.

Master covenants to instruct.

(1) See notes and variations to No. CXIII. *ante*, p. 399.

(2) By stat. 5 Eliz. c. 4. (sec. 25.) it is declared (for the better advancement of husbandry and tillage) that every person being a householder, and having and using half a plough-land (*i. e.* about fifty acres, see Jac. L. *Dict.* "*Hide*") at the least in tillage, may receive as an apprentice any person of above the age of ten years, and under the age of eighteen years, to serve in husbandry until the age of twenty-one years at the least, or until the age of twenty-four years, as the parties can agree, which said taking of an apprentice shall be by indenture. 5 Eliz. c. 4.

(3) See *supra*, n. (2).

(4) If he be bound by his father or guardian; see *ante*, No. CXIII.

APPRENTICESHIP. *Husbandry, &c.* Premium.

sideration of the sum of £ lawful current money of the united kingdom of Great Britain and Ireland in hand well and truly paid to the said (*master*) by the said (*apprentice*), at or before the signing and sealing of these presents, the receipt whereof the said (*master*) doth hereby acknowledge, and of and from the same doth acquit, release, and for ever discharge the said (*apprentice*), his executors and administrators, by these presents, He the said (*master*) doth covenant, promise, and agree with and to the said (*apprentice*), his executors and administrators, that he the said (*master*) shall and will at all times, and from time to time during the said term, teach and instruct, or cause to be taught and instructed, him the said (*apprentice*), in the art, business, science, or employment aforesaid, and all matters and things incident thereunto, according to the best of his skill, knowledge, and judgment, and according to the most approved or generally received method, way, or practice. AND, &c. [*add usual covenant as to board, &c. according to the agreement between the parties* (1)]. IN WITNESS, &c.

Master covenants to instruct.

Other clauses.

(1) See this and other clauses to be here added, if accordant with the intention or agreement of the parties, *ante*, No. CXIII. p. 399. in notes.

APPRENTICESHIP.
Manufacturer.

No. CXIX.

Indenture of Apprenticeship with a Manufacturer (1), *the Apprentice binding himself* (2).

THIS INDENTURE made the day of , in the year of our Lord 18 , BETWEEN (*the apprentice*) of, &c. being above the age of years, that is to say, of the age of years (3),

(1) Various statutes have been from time to time passed for the purpose of providing for the health and morals of apprentices, in such of our manufactories as are supposed to be peculiarly prejudicial to the one, or exposing the other to more than ordinary temptations. Such of the provisions of which, as more immediately relate to the master, it will be proper here to notice for the information of the solicitor who may be applied to for the purpose of preparing articles of apprenticeship in manufacturing towns.

42 Geo. III. cotton and woollen manufactories.

By 42 Geo. III. c. 48. it is enacted, that male apprentices in the cotton and wool manufactories shall sleep apart from the female, and only two in a bed of either. That the master shall supply his apprentice with two complete suits of clothing. That no apprentice shall be compelled to work more than twelve hours a day (*i. e.* from six in the morning till nine at night inclusive of the time employed for eating). That the apprentice shall not be employed in work between the hours of nine at night and six in the morning. That every apprentice shall be instructed during some part of the usual working hours of each day, for the first four years of his apprenticeship, in reading, writing and arithmetic, according to his age and abilities; and that every apprentice shall receive religious instruction on a Sunday in the manner therein specified. And the stat. 59 Geo. III. c. 66. enacts that no child under the age of nine years shall be employed in spinning cotton-wool into yarn, or in previously preparing such wool, or in cleansing, &c. any manufactory, building or machinery, for more than twelve hours in the day, *i. e.* from five in the morning till nine in the evening, exclusive of meal times, and shall be allowed half an hour for breakfast, and one hour (between eleven o'clock and two) for dinner; and see also 28 Geo. III. c. 73; 59 *ibid.* c. 66; and 60 *ibid.* c. 5. But with respect to other species of manufacturing trades, not regulated by these Acts, the ages and time of employment of the apprentices may be as agreed upon between the parties, see *ante*, No. CXIII. p. 399. n. (1).

59 Geo. III. *ibid.*

Other trades.

(2) If he be bound by or with the assent of his parents or guardians, see *ante*, No. CXIII.

(3) See the above cited Acts.

APPRENTICESHIP. *Manufacturer.*

or thereabouts, of the one part, and (*the master*) of, &c. of the other part, WITNESSETH that the said (*apprentice*), of his own free will and accord, testified by his sealing and delivering these presents, hath put and bound himself apprentice to the said (*master*) to be taught and instructed in the trade, business and manufactory of , from the day of the date of these presents unto the full end and term of years, from thence next ensuing, at or for the premium or sum of £ . AND that the said (*master*), in consideration of the said sum of £ , of good and lawful money of the united kingdom of Great Britain and Ireland, to him in hand well and truly paid by the said (*apprentice*) at or before the sealing and delivery of these presents, the receipt whereof the said (*master*) doth hereby acknowledge, and of and from the same and every part thereof doth acquit, exonerate and discharge the said (*apprentice*), his executors, administrators and assigns, by these presents HATH agreed to take and accept the said (*apprentice*) as his apprentice, during the said term of years. AND the said (*apprentice*) doth hereby covenant, promise and agree, to and with the said (*master*), his executors and administrators, that he the said (*apprentice*) shall and will during all the said term, well and truly serve the said (*master*), as apprentice in the said trade, business or manufactory of , and diligently attend to the business and concerns of his said master, from the hour of o'clock in the morning, until the hour of in the evening (1), save and except an interval of two hours, which is to be allowed the said (*apprentice*) to dine; and shall not nor will do any damage or injury to his said master, nor knowingly suffer the same to be done without acquainting his said master thereof, but shall and will in all respects acquit, conduct and demean himself as an honest and faithful apprentice ought to do. AND the said (*master*) doth hereby for himself, his executors and administrators, covenant, promise and agree, to and with the said (*apprentice*), his executors, administrators and assigns, in manner following: (that is to say) that he the said (*master*) according to the best of his power, skill, and knowledge, shall and will during the said term of years, teach and instruct, or cause to be taught and instructed the said (*apprentice*) in the said trade, businesses or manufactory of , and in all things whatsoever incident or belonging thereto, in such manner as he the said (*master*) now or at any time hereafter during the said term shall use or prac-

WITNESS.

Apprentice binds himself.

Master agrees to take said apprentice.

Premium.

Covenant by apprentice to serve.

Covenant by master to instruct.

(1) See *ante*, p. 421. n. (1).

APPRENTICESHIP.

Manufacturer.

Master to allow an annual sum for board.

tise the same. AND further that the said (*master*) shall and will well and truly pay or cause to be paid unto the said (*apprentice*) or his assigns, during the said term of years, or during so much thereof as the said (*apprentice*) shall continue his apprentice as aforesaid, the several sums of money, and payable at the several times hereinafter mentioned, in lieu and full satisfaction of the board and lodging of the said (*apprentice*) during the said term, (that is to say) the sum of £ of lawful current money of Great Britain, for the first year of the said term, the sum of £ of like lawful money for the second year of the said term, the sum of £ of like lawful money for the third year of the said term, and the sum of £ for the remaining years of the said term (unless the said apprenticeship be sooner determined at such request of the said (*apprentice*) as is hereafter mentioned, in which case the said last mentioned sum of £ shall not be paid or payable), together with a proportionable part of either of the said sums which may happen to be due at any sooner determination of the said apprenticeship, to be computed from the last quarterly day of payments thereof, up to the day of such determination, the said several annual sums to be paid and payable by four equal quarterly payments on the day of , the day of , the day of , and the day of in every year, and the first of the said payments (or of such proportionate part of the said sum of £ as shall be then due) to begin and be made on the day of , now next ensuing, and every of the same to be free and clear of all manner of deductions whatsoever. AND the said (*apprentice*) doth hereby for himself, his executors and administrators, consent and agree, to and with the said (*master*), his executors and administrators, to take and accept of the said several annual sums and payments, in lieu of and in full satisfaction for his board and lodging in the said respective years. AND moreover the said (*master*) doth hereby for himself, his executors and administrators, covenant, promise and agree, to and with the said (*apprentice*), his executors, administrators and assigns, that if the said (*apprentice*) shall happen to depart this life at any time within calendar months to be accounted from the date of these presents, he the said (*master*), his executors and administrators, shall and will return and pay, unto the executors, administrators or assigns of the said (*apprentice*) the sum of £ part of the said sum of £ , so paid to him the said (*master*) by way of premium as aforesaid. AND further that he the said (*master*), his executors, administrators or assigns, will not require or call upon or require the said (*apprentice*) to work at the said trade, business or manufactory, or attend to the business or

Covenant by master to return part of premium on death.

APPRENTICESHIP.

Manufacturer.

concern of the said (*master*), his executors, administrators or assigns, therein, for any greater number than hours in one and the same day, namely from the hour of o'clock in the morning, until the hour of o'clock in the afternoon, as is hereinbefore expressed (allowing hours to dine as aforesaid), unless the said (*apprentice*) shall unavoidably be longer engaged by extreme and unusual press of business, and then for no longer time or period than shall be absolutely requisite to complete the same. AND moreover that he the said (*master*), his executors, administrators and assigns, will permit and suffer the said (*apprentice*), if he shall think fit and require the same, freely to depart from and leave the service of him the said (*master*), his executors, administrators or assigns, at the expiration of the first years of the said term of years hereinbefore mentioned, and use and employ the remaining year of his said apprenticeship to or for his own benefit and advantage, when and as he shall think fit, without any hindrance or molestation of or by the said (*master*), his executors, administrators or assigns, he the said (*apprentice*) relinquishing all claim to the said sum of £ hereinbefore stipulated to be paid by the said (*master*) for the said last year of the said term, or any thing hereinbefore contained or implied to the contrary thereof in anywise notwithstanding. AND it is hereby mutually agreed and declared, by and between the parties to these presents, that in case the said (*master*) shall happen to depart this life before the expiration of the said apprenticeship, that then and in such case the executors or administrators of him the said (*master*) shall and will, as soon as may be after his decease, find and provide a new and other proper master in the said trade, business, or species of manufactory, and at their own charge, turn over and assign the said (*apprentice*) to such new master for the residue which shall be then unexpired of the term of his apprenticeship, upon the same terms, or upon terms equally advantageous to the said (*apprentice*), as are contained in these presents; and in default of so doing, they the said executors or administrators of the said (*master*) shall and will pay unto the said (*apprentice*), his executors, administrators or assigns, the sum of £ , for each and every year of the said term of years which shall then remain unexpired, and so in proportion for any less period than one full year. AND lastly, for the true performance of the several covenants and agreements hereinbefore mentioned and contained, on the part of the said (*master*), his executors and administrators, to be taught, paid, done and performed in manner before mentioned, and according to the true intent and meaning of these presents, he the said (*master*) doth

Master not to require more than so many hours' work each day.

Master to permit apprentice to quit at the end of years.

Apprentice on death of master to be turned over to another.

Penal sum.

bind himself unto the said (*apprentice*), his executors, administrators or assigns, in the penal sum of £ · , of lawful money of the united kingdom of Great Britain and Ireland firmly by these presents, as or by way of liquidated and ascertained damages (1). IN WITNESS, &c.

APPRENTICESHIP. *Manufacturer.*

(1) See *ante*, p. 65. n. (3). Penal sum.

APPRENTICESHIP.

Mariner.

No. CXX.

An Indenture of Apprenticeship with the Master of a Vessel (1), *as* Seaman *or* Mariner.

THIS INDENTURE made the day of in the year of our Lord 18 , BETWEEN (*apprentice*) son of, &c. [*as the case may be*], being under the age of seventeen years, i. e. of the age of years and

3 Geo. IV. c. 25.

(1) By act 3 Geo. IV. c. 25. it is enacted, That all masters of merchant ships, exceeding the burthen of eighty tons, shall have on board their ships, at the time of such ships clearing out from any part of Great Britain, an apprentice or apprentices, in the following proportion to the number of tons of her admeasurement, according to the certificate of registry; that is to say, for every ship or vessel exceeding eighty tons and under two hundred tons, one apprentice at least; for every ship or vessel of two hundred and under four hundred tons, two apprentices at least; for every ship or vessel of four hundred tons and under five hundred tons, three apprentices at least; for every ship or vessel of five hundred tons and under seven hundred tons, four apprentices at least; for every ship or vessel of seven hundred tons and upwards, five apprentices at least; all of whom shall at the period of being indentured respectively, be under the age of seventeen years: and every apprentice so to be employed, shall be indented for at least four years; and the indenture of every such apprentice shall be enrolled with the collector and comptroller at the custom-house of the port from whence any such ship or vessel shall first clear out after the execution of such indenture.

But it is declared that nothing in the act shall alter or in anywise affect any act in force (and not amended or repealed by the said act), whereby any ships are required to have apprentices on board, and that such apprentices as shall be on board any ships conformably to the rules of any such act, shall be counted in the number required by this act.

And every person to whom such apprentice shall have been bound may employ him at any time in any vessel of which such person may be the master or owner, and may also, with the consent of such apprentice, if above the age of seventeen, and if under that age with the consent of his parents or guardians, transfer the indentures, by endorsement thereon (without stamp), to any other person who may be the master or owner of any other registered ship.

APPRENTICESHIP.

Mariner.

WITNESS.

no more (1), of the one part, and (*master*) master, of the merchant ship or vessel called , of the other part, WITNESSETH that the said (*apprentice*) HATH bound himself and hereby DOTH bind himself [with the consent of the said his father, signified by his signing and sealing hereof] unto (*master*) of, &c. after the manner of an apprentice, to serve him the said (*master*) and such other person or persons in the navigation of any ship or vessel as the said (*master*) shall order and appoint, and to learn the art of seamanship as a sailor or mariner, from the day of the date hereof, for the full term of years (2) thence next ensuing; during all which said term the said (*apprentice*) shall and will faithfully serve the said (*master*), and do and perform all such service and business, as well at sea on board any ships or vessels which shall belong to or be employed in the service of the said (*master*) and with and under such person or persons as he shall from time to time order and appoint, or otherwise, as the occasions of the said (*master*) shall require; and shall and will obey all the lawful commands of the said (*master*) and such other person or persons with whom he shall from time to time order and appoint him to serve, willingly and without murmur; and go in any ship or vessel in or to which he shall be ordered to go, and diligently, carefully and respectfully demean and behave himself towards him and them at all times. AND that he the said (*apprentice*) shall not nor will do, or willingly suffer to be done by others, any hurt, prejudice or damage to the goods, merchandizes or other property or affairs of his said (*master*), or any other with whom he shall be appointed to serve as aforesaid, but the same to the utmost of his power shall hinder and prevent, or to him and them forthwith give notice thereof. AND shall not nor will absent himself from the said service by day or night without express leave in that behalf, but in all things as a good and faithful apprentice, shall and will demean and behave himself towards his said master and such person or persons with whom he shall order him from time to time to serve as aforesaid, during the said term. AND the said (*master*) shall and will teach or cause to be taught the said (*apprentice*) and instructed in the art, business and duties of a sailor or mariner so far as shall be necessary or needful in or for the voyages wherein he shall be employed. AND also shall and will find and provide unto and for his said apprentice sufficient meat, drink, washing and

Apprentice binds himself for years.

Will faithfully serve.

And obey commands.

Will not prejudice master.

Will not absent himself.

Master will teach apprentice.

And find board.

(1) See the preceding act, *ante*, p. 426. n. (1).

(2) See *ibid.*.

APPRENTICESHIP.
Mariner.

wearing apparel both woollen and linen, and all other necessaries during the said term. AND for the true performance, &c. (1) IN WITNESS, &c.

Penal sum.

(1) Here may be added a penal sum on the part of the master or the father of the apprentice, as *ante*, p. 409.

No. CXXI.

Articles of Apprenticeship with a Merchant (1).

ARTICLES OF AGREEMENT indented, made the day of in the year of our Lord 18 , BETWEEN (*father of apprentice*) of, &c. of the one part, (*apprentice*) son of the said of the second part, and (*merchant*) of, &c. of the other part, as follows: WHEREAS the said (*father*) the day of the date hereof, hath freely given and paid unto the said (*merchant*) the sum of £ of, &c. to the intent and purpose that he the said (*merchant*) shall accept and take [with the consent of the said (*apprentice*) testified by his signing and sealing hereof] into his service to be employed in merchandizing affairs the said (*apprentice*). NOW THESE PRESENTS WITNESS, that in consideration of the said sum so well and truly paid to him as aforesaid (the receipt whereof he doth hereby acknowledge), he the said (*master*) is contented and agrees to accept and take the said (*apprentice*) to be his apprentice in merchandizing affairs and other business of trade, and accordingly to employ him therein not only in England but in the parts beyond the seas where the said (*master*) now tradeth or hereafter shall trade, and that for the term or space of years to be accounted from the day of the date hereof and to be thence next ensuing. AND thereupon the said (*father*), for himself, his executors and administrators, DOTH covenant and grant to and with the said (*master*), his executors and administrators, by these presents, that the said (*apprentice*), his son, shall and will during all the said term (if he so long live) well, diligently and faithfully to the utmost of his power and skill serve him the said (*master*) in the trade of merchandizing and other his affairs, at such place or places, either

WITNESS.
Master agrees to take apprentice.

The father covenants for his son's faithful services.

(1) By 5 Eliz. c. 4. sec. 27. it is enacted that no person dwelling in any city or town corporate exercising the mystery or craft of a *merchant*, trafficking by trade beyond the seas, shall (unless qualified as therein mentioned) take apprentices; but these restrictions are now repealed by the act of 54 Geo. 3. c. 96, see *ante*, p. 399, n. (1).

APPRENTICESHIP.
Merchant.

beyond the seas or within the united kingdom, whereever the said (*master*) shall assign or appoint, and without at any time absenting himself from or neglecting the same. AND that he the said (*apprentice*) shall and will from time to time receive and take into his charge and custody all and every the goods and merchandizes whatsoever which shall be consigned or sent to him the said (*apprentice*) by or for the use or account of the said (*master*); and also sell and dispose of the same goods and merchandizes for the most and best profit and price for the said (*master*), his executors, administrators and assigns; and shall also from time to time and at all times during the said term follow and perform all and every such advice, directions, orders and commissions as the said (*master*) shall by letter or advice or otherwise give, send or make known to him the said (*apprentice*) in, about or concerning the merchandizing aforesaid. AND also that he the said (*apprentice*) shall and will at the charge of the said (*master*), his executors, administrators and assigns, provide and keep, in due orderly manner, books of account touching this said employment in merchandizing as aforesaid, according to the custom of merchants in such cases used; and shall deal justly, truly, and faithfully to and with the said (*master*), his executors, administrators and assigns, in all and every his accounts, reckonings, bargains, buying, selling, doings and dealings in and about the said employment in merchandizing as aforesaid; and shall from time to time, once in every months or oftener, transmit and send unto the said (*master*), his executors, administrators and assigns, true accounts and reckonings of all the businesses and dealings of him the said (*apprentice*); and also letters of advice from time to time, and so often as conveniently can or may be, of all matters and occurrences which shall arise concerning his said service or employment; and shall and will return and come back to England, if employed abroad, with all and every books of accounts, duly posted and made up, whensoever he shall be thereunto advised and required by the said (*master*), his executors, administrators or assigns, by letters missive or otherwise. AND that the said (*apprentice*) shall from time to time, upon every reasonable request, show forth all his books of accounts concerning all doings or dealings as aforesaid, unto the said (*master*), his executors, administrators and assigns, or to whomsoever he or they shall appoint, and also state and give just, true, plain and perfect accounts and reckonings in writing of and concerning all and every the said goods, wares, monies, debts and merchandizes whatsoever which shall hereafter come to the hands or charge of him the said (*apprentice*), of or belonging to the said master, either solely or jointly with

Apprentice to take under his care goods, &c. and sell the same.

And follow directions.

Keep accounts, &c.

Apprize of transactions.

Deliver accounts, &c.

APPRENTICESHIP.
Merchant.

others, or for which the said (*apprentice*) may or ought to be accountable. AND moreover that he the said (*apprentice*) shall within days next after the making every such account as aforesaid, well and truly satisfy, pay, and deliver unto the said (*master*), his executors, administrators and assigns, all and every such goods, wares, monies, debts, merchandizes, securities and other things whatsoever as by or on the foot of the same account shall appear or be found to be due or belonging to him the said (*master*), his executors, administrators or assigns. AND thesaid (*father*), for himself, his executors and administrators, doth hereby covenant, promise and agree to and with the said (*master*), his executors, administrators and assigns, by these presents, that he the said (*father*), his executors or administrators, at his and their own proper costs and charges, shall and will find, provide and allow unto and for the said (*apprentice*) cloathing and apparel of all sorts fitting for him in his said service and employment, during the said term. AND the said (*master*), doth hereby covenant, promise and agree with and to the said (*father*), his executors, administrators and assigns, that he the said (*master*), his executors or administrators, shall and will employ and instruct, or cause to be employed and instructed, him the said (*apprentice*) during the said term, in the art, mystery and skill of traffic, and merchandising, and all matters relating thereto, to the best of his knowledge and power, and also shall and will find and provide the said (*apprentice*) with proper and sufficient meat, drink and lodging, and all other necessaries (apparel excepted) during all the said term (1). IN WITNESS, &c.

Pay over balance.

The father to find clothes.

The master to find meat, &c.

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(1) See other clauses, &c. which may be inserted if agreeably to the intention of the parties, *ante*, No. CXIII. p. 399, in notes, and No. CXV. p. 410. and in the *margins*.

Other clauses.

APPRENTICESHIP.
Milliner, &c.

No. CXXII.

**Articles of Apprenticeship with a* Milliner *and Mantua or Dress-maker.*

ARTICLES of agreement indented and made this day of , in the year of our Lord 18 . BETWEEN (*mistress*), milliner and mantua-maker, of the first part, and (*father*) [*or as the case may be*] of, &c. for and on the behalf (*apprentice*) his daughter, of the second part, and the said (*apprentice*), of the third part, as follow, (that is to say). THESE PRESENTS WITNESS the said (*mistress*), as well in consideration of the sum of £ , to be paid as hereinafter is mentioned, as for other the considerations hereinafter mentioned, doth hereby covenant and agree to and with the said (*father*), his executors, administrators and assigns, that she, the said (*mistress*) shall and will within the time and space of calendar months from the date hereof, if she the said (*mistress*) shall so long live, teach and instruct, or cause to be taught and instructed the said (*apprentice*), to the best of her power and skill, the arts or businesses of millinery and mantua or dress-making, and in measuring for and cutting out shapings, making gowns, pelisses, child-bed linen, infants' cloathes; and also caps, bonnets, hoods, and all other things belonging to the said respective trades or businesses. AND also find and provide unto and for the said (*apprentice*) all her diet, washing and lodging, during the said term or time. In consideration whereof the said (*father*) doth hereby covenant, promise and agree, with and to the said (*mistress*), her executors, administrators and assigns, to pay to the said (*mistress*) the sum of £ , at the time and in the manner following (that is to say), £ , part thereof on or before the day of now next ensuing, the further sum of £ , other part thereof on or before, &c. and the remaining part of the said sum of £ on or before the day of , then next following, in case they the said (*mistress and apprentice*) shall be both then living. And the said (*father*) doth likewise covenant and agree to and with the said (*mistress*), that she the said (*apprentice*) shall dwell with and serve the

WITNESS.
Milliner agrees to teach.

And find diet, &c.

Father to pay the premium by instalments.

Covenants to serve.

said (*mistress*) in her said trades or businesses, during the said term or period of calendar months, which the said (*apprentice*) doth hereby consent and agree to do accordingly (testified by her being a party to and signing and sealing hereof), and that she the said (*mistress*) shall have the benefit of her said work during the said time. And it is further declared and agreed between the said (*father*) and (*mistress*), that in case the said (*mistress and apprentice*), or either of them, shall happen to depart this life during the said period of calendar months, then so much only of the said sum of £ , as shall then have become due shall be paid or payable, and the residue thereof, and the covenant or agreement hereinbefore contained in relation thereto, be and be considered no longer due or payable, any thing hereinbefore contained or implied to the contrary notwithstanding. AND lastly, the said (*mistress*) doth hereby covenant and agree to and with the said (*father*), that if the said (*apprentice*) shall be in health at the expiration of the said term or period of calendar months, she the said (*mistress*) will employ her the said (*apprentice*) in her said arts, trades or businesses, or one of them, as a journeywoman, at the wages or salary of per week, for the space of next thereof, and provide her with diet and lodging during the said time (1). IN WITNESS, &c.

APPRENTICESHIP

Milliner, &c.

The mistress to have the benefit of her work.

Agreement to be journeywoman after the term.

(1) Other clauses providing for various contingencies may be found, and added here, if so agreed, *ante*, No. CXIII. p. 399, in notes.

Other provisions.

APPRENTICESHIP.

Parish.

No. CXXIII.

**Indentures of Apprenticeship where the Apprentice is put out by the* Parish (1).

THIS INDENTURE made the day of (2) in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN (*the churchwardens*) of the parish of in the county of , and (*overseers* (3)) of the poor of the same parish of the one part; and (*master*) of, &c. of the other part, WITNESSETH, that the said churchwardens and overseers, by the assent of (4) (*two justices*) his Majesty's justices of the peace of the said county, whose hands and seals are hereunto put upon the day of the date hereof (5), according to the statute for the relief of the poor in that case made and provided [*or say*, according to the form of the statute made in

Churchwardens put out apprentice.

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3 Eliz. c. 2.

18 Geo. III. c. 47.

(1) The stat. 3 Eliz. c. 2. sec. 5. enacts, that the churchwardens and overseers of any parish, or the major part of them, by the assent of two justices, may bind poor children apprentice till such child, if a man child, shall be twenty-four, and if a woman child, twenty-one years of age, or the time of her marriage; but by the act of 18 Geo. 3. c. 47. it is declared, that no man child, bound apprentice under the said statute shall be bound for any longer term than till he attain the age of twenty-one years.

(2) See *ante*, p. 400. n. (1).

(3) By 1 and 2 Geo. 4. c. 32. the authority of churchwardens and overseers to sign indentures of apprenticeship is extended to one churchwarden or chapel-warden when there is no more, and their acting as such shall for this purpose be conclusive, without enquiry into the legality of their appointments.

56 Geo. III. c. 139.

(4) By 56 Geo. 3. c. 139. before any child shall be bound an apprentice by overseers or churchwardens, such child shall be taken before two justices for their approbation as to the binding intended, with respect to the character of the proposed master, the distance of his residence, &c. and the names of the said justices shall be inserted in the indentures, and the age of every child bound by overseers and churchwardens shall be not less than nine years.

(5) The date of the assent or order of the justices must be inserted or referred to, see Rex v. Rumburgh, 2 Bar. and Cres. 222, and Dow. and Ryl. 338. (s. c.)

APPRENTICESHIP
Parish.

the year of the reign of entitled, An Act for the Relief of the Poor, *or as the case may be*], HAVE put out and bound (*apprentice*) a poor child of the said parish of now of the age of years, apprentice to the said (*master*) until the said (*apprentice*) shall come to the age of years (1), during all which term the said apprentice shall and will well and faithfully serve [*insert usual covenant for good behaviour*] (2). AND also during all the said term the said master, for himself, his executors, administrators, and assigns, doth covenant and grant to keep the said apprentice in good and decent order, with necessary and competent meat, drink, washing, lodging, and apparel, and in honest and convenient labour shall use and employ him, or cause him to be used and employed during the said term, and at the end of the said term shall and will give his said apprentice double apparel. PROVIDED ALWAYS (3) that the said last mentioned covenant on the part of the said (*master*), his executors, and administrators, to be done and performed, shall continue and be in force for no longer time than for three calendar months next after the death of the said (*master*) in case he the said (*master*) shall happen to die during the continuance of the said apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of King Geo. III. entitled [*here set forth the title of the act*].

Apprentice's behaviour.

Master's duty.

(Churchwardens, Overseers and two Justices. (4)

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(1) See *ante*, n. (1). (2) See *ante*, p. 427.

(3) By 32 Geo. 3. c. 57. it is declared, that in case of the death of any master or mistress of any parish apprentice during the term of his apprenticeship (resident in the family of such master or mistress, with whom no more than 5*l.* was given, the covenant for maintenance to be contained in his indenture shall be in force no longer than three calendar months after the death of such master or mistress; and that in all parish indentures there shall be annexed to the covenant for maintenance a proviso to that effect; but if omitted, the same shall be virtually supplied by the act; and which provision shall extend to subsequent as well as to the original masters or mistresses of such apprentices.

32 Geo. III. c. 57.

(4) As the statute binds the master and apprentice, their signature is not necessary.

*** Parish-apprenticeship Indentures are exempted from stamp.

Stamp.

APPRENTICESHIP.

School.

No. CXXIV.

**An Indenture of Apprenticeship with a* Schoolmistress, *to qualify a Pupil as a Governess* (1).

THIS INDENTURE made the day of in the year of our Lord 18 , BETWEEN (*the father of the apprentice*) and the said (*apprentice*) of the one part, and (*mistress*) of, &c. schoolmistress of the other part (2), WITNESSETH that (*apprentice*) HATH of her own free will and accord, and by and with the consent of her father, testified by his sealing and delivering of these presents, placed and bound herself an apprenticed pupil to the said (*mistress*), to be taught and instructed in the art, science or occupation of governess and teacher of young ladies in the various branches of education and accomplishments customarily taught in seminaries for female education, to live with, continue and serve her as an apprentice from the day of the date hereof unto the full end and term of years from thence next ensuing and fully to be complete and ended. During all which said term or time the said (*father*) for himself, his executors and administrators, and for the said (*apprentice*) his daughter, doth covenant and promise and she the said (*apprentice*) doth also promise and agree to and with the said (*mistress*), her executors, administrators and assigns, that she the said (*apprentice*) shall and will well and faithfully serve, conduct and demean herself, and be just and true to her the said (*mistress*), her executors, administrators and assigns, and in all things ever willingly attend to and obey all her lawful orders, instructions and advice. AND for and in consideration of the covenant hereinbefore contained, and of the sum of £ of lawful current money of England, to the said (*mistress*) in hand well and truly paid by the said (*father*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, she the said (*mistress*) doth hereby for herself, her executors and administrators, covenant,

Father covenants for fidelity.

Mistress covenants to instruct.

(1) See notes &c. to No. CXIII. *ante*, p. 399.

(2) If the apprentice bind herself, see *ante*, *ubi supr.* and *ante*, No. CXV. p. 410.

APPRENTICESHIP. School.

promise and agree with and to the said (*father*) and the said (*apprentice*), and their respective executors and administrators, well and sufficiently to teach and instruct, or cause to be well and sufficiently taught and instructed, her the said (*apprentice*) in the English, French, and Italian languages; and the arts or accomplishments of music upon or with the piano-forte and harp; drawing in or with water-colours and crayons, and dancing; all which accomplishments shall be taught under or by the best or good masters and other teachers; together with fancy or ornamental needlework, and all other arts and accomplishments usually taught unto or learnt by ladies of genteel parents and education in the superior or best seminaries for female education, and so and in such manner and in order that she the said (*apprentice*) shall or may, at the end of her said apprenticeship or pupilage, be competent to teach the various arts, sciences and accomplishments aforesaid, as assistant, governess or teacher in a genteel family, or school for female education. AND at the expiration of her said apprenticeship or pupilage, shall and will give a true and faithful character of the abilities and competency of her the said (*apprentice*) therein, as and when thereto requested by her the said (*apprentice*) or her said father or other friends. AND also shall and will during the said period find and provide her the said (*apprentice*) with good, wholesome and proper food, drink, washing and lodging, and all other necessaries, in sickness and in health (save only medicine and surgical attendance and advice if requisite), meet and accustomed for such an apprentice or apprenticed pupil, during the term aforesaid. AND, &c. (1). IN WITNESS, &c.

And give character.

And provide food, &c.

(1) Here may be added other clauses accordant with the agreement of the parties, as *ante*, No. CXIII. p. 399, in *notes*, and No. CXV. p. 410, in *margins*.

APPRENTICESHIP.

Solicitor (articled clerk).

No. CXXV.

Articles of Clerkship (1) *to an Attorney or* Solicitor.

ARTICLES OF COVENANT AND AGREEMENT indented, concluded and agreed upon this day of , in the year of our Lord 18 ,

Parties. BETWEEN (*the father of the clerk*) of, &c. and (*the clerk*) son of the said (*father*) of the one part, and (*the master*) of, &c. gentleman, one of the attornies of his Majesty's Courts of King's Bench and Common Pleas at Westminster, and solicitor of the High Court of Chancery, of the other part.

Recital of agreement of clerkship. WHEREAS the said (*master*) hath agreed with the said (*father*) to take the said (*clerk*) his son, as his articled clerk, to be taught the practice of an attorney and solicitor, upon the terms and for the premium or sum hereinafter mentioned. Now

WITNESS. The master, in consideration of the premium, covenants to instruct clerk, THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*master*) in hand well and truly paid by the said (*father*) at or before the sealing and delivery of these presents, the receipt whereof the said (*master*) doth hereby acknowledge, HE the said (*master*) for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said (*father*), his executors, administrators and assigns, in manner following (that is to say), that he the said (*master*) shall and

during the term of 5 years, will from henceforth, for and during all the term of five years (2), to be computed from the date of these presents, according to the

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(1) See notes to No. CXIII. p. 399.

Attornies must have served a clerkship of 5 years (2) By 2 Geo. 2. c. 23, it is enacted, that no person shall act as an attorney or solicitor unless he has served a clerkship, under contract in writing to an attorney or solicitor duly admitted in one of the Courts at Westminster, or to one of the Six Clerks, for five years; and by 22 Geo. 3. c. 46, it is enacted that he shall, during the whole time of such service, continue and be actually employed by such attorney or solicitor, or his agent, in the proper business of an attorney or solicitor. And on the construction of this statute, it has been deter-

APPRENTICESHIP.

Solicitor (articled clerk).

best of his skill and knowledge, teach and instruct him the said (*clerk*) in the profession, business and practice of an attorney and solicitor (1). AND also that he the said (*master*) shall and will, at the expiration of the said term, at the request, costs and charges of the said (*clerk*), use his best endeavours to procure him to be admitted (2) and sworn an attorney and solicitor of the said Courts of King's Bench and Common Pleas, and of the High Court of Chancery, and of such other of his Majesty's Courts at Westminster, or elsewhere, in or of which he the said (*clerk*) shall think fit to be admitted an attorney or solicitor. AND (3) further, that he the said

in the profession of an attorney. And at the end of the term will procure him to be admitted.

Will not assign clerk to another master.

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mined, that the act must be strictly and rigidly complied with; and if therefore he serve but a small portion of his time with another attorney or solicitor, even with the express consent of his master, it is not a sufficient serving under the statute; *ex parte* John Hill, 7 Durnf. and E. 456; unless such attorney be the agent of the master, whom, by a rule of the Court of King's Bench, Trin. Term, 31 Geo. 3. he is not permitted to serve for a longer period than one year of the term. See 1 Durnf. and E. 379.* But now by 1 and 2 Geo. 4. c. 48 (and see 3 Geo. 4. c. 16), if any such clerk shall have taken the degree of Bachelor of Arts within six years after his matriculation, or of law within eight years, in either of the Universities of Oxford, Cambridge or Dublin, his being articled for the term of three years, to commence within four years after taking such degree, shall be sufficient. And it is further declared by the last-mentioned act, that if a clerk be articled for the term of five years, his continuing for a term not exceeding one year with a practising barrister, or certificated special pleader, shall be deemed part of the service of his term of articles.

Act of 2 Geo. 2. c. 23. must be strictly complied with.

(1) If the master is to provide the clerk with board and lodging, on being allowed an annual sum for that purpose, say,

Master to board clerk, and have an allowance.

"And also shall and will, during the said term, find and provide the said (*clerk*) with suitable and sufficient lodging and residence in the house, and board with the family and at the table of him the said (*master*), upon being paid at or after the rate of £ per annum, as a recompense or remuneration for the same."

(2) It is requisite, in order to entitle an attorney to practise in the Courts of Westminster, that he should be recognized by the Courts, by being duly admitted and enrolled in the courts where he practises; and this admission must be in each of those Courts, for the purpose of enabling him to practise there in his own name; see Vincent v. Holt, 4 Taunt. 452; but by 2 Geo. 2. c. 23. s. 10. he is allowed to practice in the name of another attorney, if he have the consent in writing of such attorney for that purpose.

Attorney must be admitted and enrolled previously to his practising.

(3) If it be agreed that the master shall have the liberty of assigning over the clerk (sed vid. *ante*, n. 2.), instead of the above proviso, say,

Liberty for master to assign the clerk.

"PROVIDED ALWAYS, and it is hereby mutually declared and agreed by and between the said parties to these presents, that it shall and may be lawful for the said (*master*), at any time during the said period of five years, to assign or turn over unto any other sworn at-

APPRENTICESHIP. Solicitor (articled clerk).

(*master*) shall not, nor will, within the said term of five years, assign or turn over the said (*clerk*) to any other attorney or solicitor, or to any other person or persons whomsoever, for the remainder or then residue thereof without the consent or approbation of the said (*father*), his executors and administrators, or the direction of one of his Majesty's Courts at Westminster. AND moreover, that in case the said (*master*) shall depart this life before the expiration of the said term of five years, his executors or administrators shall and will pay or cause to be paid (1) unto the said (*father*), his executors or administrators, or such other person or persons as he the said (*father*), or his executors or administrators shall direct or name in that behalf, such part or proportion of the said sum of £ at such times as hereinafter are mentioned (that is to say), in case the said master shall depart this life before the expiration of the first year of the said term, the sum of £ ; and if before the expiration of the second year of the said term, the sum of £ ; and if before the expiration of the third year of the said term, the sum of £ ; to and for the proper use and benefit of him or them the said (*father*), his executors or administrators, or such other person to be named in that behalf as aforesaid; and in case of such decease of the said (*master*) as aforesaid, his executors and administrators shall and will forthwith, and with all convenient speed, at the request of the said (*father*), his executors or administrators, or of the said (*clerk*), but at the expense of the executors and administrators of the said (*master*), assign over or cause to be assigned over, the said (*clerk*) unto some other attorney and solicitor to be named or approved of by him the said (*father*), his executors and administrators, for the residue which shall be then to come of the said term (2). AND THESE

If master die during the term, a portion of the premium to be returned.

Covenant by father of clerk for

torney of his Majesty's Courts of Westminster, the service and benefit of the clerkship of him the said (*clerk*) for the remainder of the said term which shall be then to come, in such manner and form as he the said (*master*) shall think fit, subject nevertheless to the same or the like covenants, clauses, and agreements, as are herein contained."

Agreement for return of part of premium on master's death valid. Portion of premium returnable on bankruptcy.

(1) An agreement that a portion of the premium given with an articled clerk or apprentice shall be returned if the master die within a given time, is good: and in equity even a larger sum than has been agreed upon has been decreed to be refunded on his dying very shortly after the execution of the articles; Newton v. Rouse, 1 Vern. 460; and although there be no such agreement, yet if the master become a bankrupt, a proportion of the premium, according to the duration of service, will be considered a debt, and proveable under the commission. *Ex parte* Sandby, 1 Atk. 149.

Part of premium to be returned on death of clerk.

(2) If it be agreed that part of the premium shall be returned on the death of the clerk within a given period, *see ante*, p. 402. n. (3).

APPRENTICESHIP.

Solicitor (articled clerk).

PRESENTS FURTHER WITNESS, that in consideration of the premises aforesaid, he the said (*father*) for himself, his heirs, executors and administrators, doth hereby covenant (1), promise and declare, with and to the said (*master*), his executors, administrators and assigns, in the manner following (that is to say), that he the said (*clerk*) shall and will diligently and faithfully serve the said (*master*) as his clerk in the said business or profession of an attorney and solicitor from the date of these presents, for and during the said term of five years thence next ensuing, and that without at any time or times wilfully or negligently concealing, obliterating, spoiling, losing, embezzling, lending, spending or making away with any of the books, papers, deeds, writings, monies or other goods, chattels or property of him the said (*master*), his executors, administrators or assigns, or of any of his or their client or clients, or any other books, papers, deeds, writings, monies, goods, chattels or property committed to the custody or care of him the said (*master*) or of the said (*clerk*) as his clerk. AND that he the said (*clerk*) shall not nor will discover or divulge any concerns or transactions in business relative to the affairs of the said (*master*) or any of his clients, which ought not to be made public, nor absent himself from the service of the said (*master*) at any time during the said term without his express consent and approbation first had and obtained for that purpose, but shall and will acquit and demean himself in all respects as an honest and faithful clerk ought to do. AND further, that he the said (*father*), his executors or administrators, shall and will from time to time, and at all times hereafter during the said term of five years, at his and their own proper costs and charges, find and provide for him the said (*clerk*), all manner of clothes, linen and other apparel fit and becoming for his use and wear as clerk to the said (*master*) as aforesaid, and also the washing, mending and repairing thereof. AND further, that he the said (*father*), his executors or administrators, shall and will, within the time appointed by Act of Parliament for that purpose, well and truly pay or cause to be paid to the Commissioners of his Majesty's Stamp duties, the tax or duty imposed upon or payable in respect of monies given with clerks and apprentices, and indemnify and save harmless the said (*master*), his executors and administrators, of and from the same and every matter and

his son's faithful service.

Will not disclose official transactions.

And to provide him with clothes, &c.

And pay the duty on premium.

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(1) If the clerk bind himself, and be under the age of 21 years, these covenants will of course be omitted.

Clerk binding himself.

APPRENTICESHIP.

Solicitor (articled clerk).

thing relating thereto. And for the true observance and performance of all and singular the covenants, clauses and agreements herein contained on the part of the said (*father*) and (*master*) respectively, and their respective executors and administrators to be performed and observed, each of them doth bind himself, his heirs, executors, and administrators unto the other of them, his executors, administrators and assigns, in the penal sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, firmly by these presents, for or by way of ascertained or liquidated damages (1). IN WITNESS, &c.

Mutual penalty for performance of covenants.

Penal sum.

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(1) See *ante*, p. 65. n. (3).

Articles of clerkship must be enrolled.

*** By 34 Geo. 3. c. 14. articles of clerkship must be enrolled within six months after the date in one of the Courts at Westminster.

Stamp.

The 55 Geo. 3. c. 184. imposes a stamp duty of £120 on all articles of clerkship or contract whereby any person shall first become bound to serve as a clerk, in order to his admission as an attorney or solicitor in any of his Majesty's Courts of Westminster, or a proctor in the High Court of Admiralty, or in the Ecclesiastical Court of Doctors' Commons, and upon any counterpart or duplicate thereof, the sum of £1 15*s.* 6*d.*; and in any of the Courts of Great Session in Wales, or of the counties Palatine of Chester, Lancaster and Durham; or any other Court of Record in England holding pleas where the debt or damages amount to 40*s.*; or as a solicitor, agent or attorney in any of the Courts of Session, judiciary, Exchequer, and commission of teinds in Scotland £60; and upon counterparts or duplicates, £1 15*s.*

The same duty is imposed upon articles of clerkship with the Six Clerks of the Court of Chancery.

But where the articles are for the continuance of the clerk for the residue of his Term, on the death of his father or master, then a duty of £1 15*s.* only on such articles and counterparts respectively. For further particulars as to which, see the schedule of this act, *post*. Vol. III. "STAMP."

ASSIGNMENTS.
Apprenticeship.

No. CXXVI.

An Assignment of Articles of Apprenticeship by the Master (1).

Variation where the assignment is by the Executors of deceased Master.

THIS INDENTURE made the day of in the year of our Lord 18 , BETWEEN (*the former master*) (2) of, &c. of the first part (*the father of the apprentice or clerk*) of, &c. and (*the apprentice* (3) *or clerk*) son of the said (*father*) of the second part, and (*the intended master*) of, &c. of the third part. WHEREAS by indentures of apprenticeship bearing date the day of , which was in the year 18 , and made or expressed to be made between the said (*father*) and (*apprentice*) of the one part, and the said (*former master*) of the other part, the said apprentice was placed with and bounden to the said (*former master*) to be taught and instructed in the trade or business of for the term of seven years from thence next ensuing, under and subject to the several terms,

Recital of articles of apprenticeship.

(1) As an apprenticeship is supposed to be founded on the good opinion the parent of the apprentice has of the master, it is considered by the law in the nature of a personal trust and confidence, and therefore not assignable to another (unless by the custom of London; 1 Keb. 250. or in the case of parish apprentices, 2 and 3 Ann. c. 6. and 32 Geo. III. c. 57.) without the consent of the apprentice. See Prob. 134; Peck's Ca. 1 Salk. 66; Baxter v. Burfield, 2 Strange, 1265. 12. Mod. 441.

Apprenticeship not regularly assignable.

(2) If the assigment be by the executor of the deceased master, say, "(*The executor*) of, &c. executor of the last will and testament of (*the former master*), deceased, of the first part."

Assignment by executor of former master.

(3) It will be necessary, for the reasons given in the preceding note, that the apprentice should be a party to the assignment; but although an assignment without such consent will not constitute an apprenticeship with the new master, it will be such a service as to entitle him to exercise his trade on the expiration of the term; Caister and Eccles' Ca. 1 Ld. Raym. 683; 1 Salk. 68. S. C.; Baxter v. Burfield, 2 Stra. 1267; Rex. v. Inhab. Stockland, 1 Dougl. 70.

Apprentice should be a party to assignment.

ASSIGNMENTS.
Apprenticeship.

covenants, and conditions therein contained (1). AND WHEREAS the said (*apprentice*) hath served with the said (*former master*) two years of his said apprenticeship, and it hath been agreed by and between the said parties hereto, that he shall be assigned over unto the said (*intended master*) for the residue of the said term of five years now to come and unexpired (2). NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, HE the said (*former master*), at the request and with the consent and approbation as well of the said (*father*) as of the said (*apprentice*), testified by their respectively being parties to and signing and sealing these presents, HATH assigned, transferred and set over, and by these presents DOTH assign, transfer, and set over unto the said (*intended master*) the hereinbefore in part recited indenture of apprenticeship, and all benefit and advantage whatsoever incident thereto, and also all and all manner of interest, property, profit or advantage, claim and demand whatsoever of him the said (*former master*), of, in, or to the same, and the service or duty of him the said (*apprentice*) during the residue and remainder now to come and unexpired of the said term of seven years, under or by force or virtue of the said hereinbefore in part recited indenture of apprenticeship or otherwise howsoever, TO HAVE AND TO HOLD the said in part recited indenture of apprenticeship, and all the right, title, interest, term, benefit, claim and demand whatsoever, of him the said (*former master*), of, in or to the same,

Recital of service for part of the term.

WITNESS.
Former master assigns.

Assignment by executor.

(1) If the apprentice be assigned by the executor of his deceased master, say,

"AND WHEREAS the said (*former master*) departed this life on or about the day of last past, having first made and duly published his last will and testament in writing, and appointed the said (*executor*) the sole executor thereof. AND WHEREAS the said (*apprentice*), at the time of the decease of the said (*former master*) had served years and upwards of his said apprenticeship under the said in part recited articles. AND WHEREAS the said (*intended master*), at the request of the said (*executor*), hath agreed to take the said (*apprentice*) as his apprentice for the residue of the said term of seven years now to come and unexpired."

Apprenticeship ceases on death of master.

(2) For the same reason that an apprentice is not assignable by his master, the apprenticeship will cease upon his death; Peck's Ca. 1 Salk. 66; except so far as concerns any covenant entered into by the master for the providing of board, &c. for the apprentice, which the executors will, to the amount of the assets, be bound to perform, *ib.*—And by the custom of London, if the master die, his executors must place the apprentice with another master of the same trade, though the covenant be only for instruction, *ib.*

and to the service or duty of the said (*apprentice*) under the same, unto the said (*intended master*), his executors, administrators and assigns from henceforth, for and during all the residue and remainder of the term of seven years, which is or may be yet to come and unexpired, and that in as ample and beneficial a manner and form, to all intents and purposes whatsoever, as he the said (*former master*) might, could or ought to have holden and enjoyed the same, by force or virtue of the hereinbefore in part recited indenture of apprenticeship or otherwise howsoever, if these presents had not been made. AND the said (*intended master*), for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, with and to the said (*father*) and (*former master*) respectively, and their respective executors and administrators, in manner following, (that is to say), that he the said (*intended master*) shall and will, at all times during the residue of the said term of seven years now to come and unexpired, teach and instruct, or cause to be taught and instructed, according to the best of his skill and knowledge, the said (*apprentice*) in the said trade or business of , and all and every the matters and things incident or relating thereto, and perform and observe all and every the covenants, clauses, provisoes and agreements in the said in part recited indenture of apprenticeship contained on the part and behalf of the said (*former master*), his executors and administrators, to be performed and observed; and save, defend, keep harmless and indemnified, the said (*former master*), his executors and administrators, of and from the same and every of them respectively. AND the said (*father*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*intended master*), his executors, administrators and assigns, in manner following, (that is to say) that the said (*apprentice*) shall and will at all times during the residue and remainder now to come and unexpired of the said term of seven years, well, truly and faithfully serve the said (*intended master*) as an apprentice in the said trade or business of , in like manner in all respects as he is or was bounden to do by the hereinbefore in part recited indenture; and that he the said (*father*) shall and will perform and observe all and every the covenants and agreements therein contained on his part and behalf to be performed and observed, in like manner as if the same had been again repeated, or contained in these presents. IN WITNESS, &c.

Covenant by intended master to instruct apprentice.

Covenant by father for son's due service.

*** The *55* Geo. III. c. 184. imposes the same ad valorem duty on the assignment of an apprentice or servant (not put out or turned over by

ASSIGNMENTS.

Apprenticeship.

Ad-valorem stamp, or assignment of articles of apprenticeship.

the parish) to a new master or mistress, upon the death, absence or incapacity of the former (where there shall be any valuable consideration given, exclusively of any part of the consideration returned or transferred by the former master to the new master), as was charged on the original indenture, which see *ante* p. 405. And where there is no new consideration, if the indenture do not contain more than 1080 words, a duty of 2*l.*; if more than that number 4*l.* 16*s.* The part bearing the ad-valorem, or higher duty (if there be two parts) to be kept by the former master, or his representatives, or by the apprentice, clerk or servant, or some other person on his behalf, and the part bearing the lower duty to belong to and be kept by the original or new master, (as the case may be) and be received in evidence accordingly. See the schedule of the act, *post.* Vol. III. "STAMP."

ASSIGNMENTS.

Apprentice (parish).

No. CXXVII.

An Assignment of a Parish Apprentice, *by Indorsement* (1):

Variations where it is by a separate instrument.

COUNTY OF

BE IT REMEMBERED, that the within named (*the master*), by and with the consent (2) and approbation of (*justices*), two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign (*apprentice*) the apprentice within named unto (*new master*), of, &c. to serve him during the residue of the term within mentioned [and (3) that he the said (*new master*) doth hereby agree to accept and take

(1) By stat. 32 Geo. 3. c. 57. masters and mistresses of parish apprentices are empowered, by indorsement on the indentures of apprenticeship, or by other instrument in writing (by the consent of two justices of the peace) to assign such apprentice to a new master or mistress for the residue of the term of apprenticeship, in the form or to the effect of the assignment above, so that such new master or mistress, by writing under his or her hand, declare his acceptance of such apprentice, and acknowledge himself or herself, and his or her executors or administrators, to be bound by the agreements and covenants contained in the indentures on the part of the master or mistress. 32 Geo. III c. 57.

(2) If the assignment is by separate instrument, the commencement of it may be as follows:— Separate instrument

"Whereas it appears unto us (*justices*), two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, that (*the apprentice*) was bound an apprentice by the churchwardens and overseers of the poor of the parish of , to (*master*), of the said parish , by indenture bearing date on or about the day of until the said (*apprentice*) should attain his age of twenty-one years. Now BE IT REMEMBERED, that the said (*master*), by and with the consent," &c. *as above.*

(3) This acceptance, &c. may be inserted in the assignment, or be indorsed upon it; if indorsed, the line within parentheses will of course be omitted.

ASSIGNMENTS.
Apprentice (parish).

(as testified by his signature hereto) [*or* by the indorsement hereupon] the said (*apprentice*) as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants within mentioned on the part of the said (*old master*), to be done and performed] according to the true intent and meaning thereof, and pursuant to the provisions of an act passed in the thirty-second year of the reign of King George the Third *(or as the case may be)*, entitled, An act for the further regulation of parish apprentices. In WITNESS whereof we the said *(former master)* and (*new master*) have hereunto set our respective hands this day of .

(former master.)
(new master.)

Stamp.

*** No stamp in instruments turning over apprentices by the parish.

Consent of the Justices to be Underwritten.

Justices' consent.

We, two of his Majesty's justices of the peace above mentioned, do consent unto the above apprenticeship. Witness our hands this day of .

(*two Justices*).

No. CXXVIII.

An Assignment of an absolute Bill *of* Sale (1) *of Goods, indorsed upon or annexed to the Bill of Sale.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*assignor*) of, &c. SEND GREETING. WHEREAS (*original bargainor*) of, &c. in and by his deed or bill of sale, under his hand and seal, bearing date the day of , and hereunto annexed [*or if indorsed* in and by the within written deed or bill of sale], bargained, sold and delivered (2), unto me the said (*assignor*), my executors, administrators and assigns, all and every his goods, wares and merchandizes, being at or in, &c. [*state as in the Bill of Sale*] (as the same are more particularly mentioned in the schedule or inventory to the same deed or bill of sale hereupon indorsed or hereunto annexed or underwritten). NOW KNOW YE, that I the said (*assignor*) for and in the consideration of the sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland to me in hand paid by (*assignee*) of, &c. (the receipt whereof I do hereby acknowledge,) HAVE bargained, sold, assigned and delivered, and by these presents publicly, and in open market, Do bargain, sell, assign and deliver, unto the said (*assignee*) all and every the goods, wares and merchandizes in the schedule to the said deed or bill of sale annexed or underwritten, and to me bargained and sold or expressed so to be as aforesaid, and all my right, title, benefit, claim and demand whatsoever therein and thereunto, under or by virtue of the said deed or bill of sale or otherwise howsoever, TO HAVE, hold, receive, take and enjoy all and singular the said goods, wares and merchandizes, and all other the premises hereby assigned or otherwise assured or intended so to be, with the appurtenances, unto him the said (*assignee*), his executors, adminis-

Recital of bill of sale.

Assignor assigns.

To hold to assignee absolutely.

(1) Of the nature, &c. of a Bill of Sale, see *post.* vol. II. "BILL OF SALE."

(2) As to the delivery of goods, &c. see *ante,* INTROD. p. xii.

ASSIGNMENTS.

Bill of Sale (absolute).

trators and assigns, to and for his and their own use and benefit, and as his and their own proper goods and chattels, from henceforth for ever, free and clear of all former and other rights, titles, charges, liens and encumbrances whatsoever [committed, done or suffered by me the said (*assignor*) or the said (*original bargainor*) or any other person or persons whomsoever].

Power of attorney.

And I the said (*assignor*) do hereby make, constitute and appoint him the said (*assignee*) to be my true and lawful attorney to demand, receive and take all and singular the said goods, wares, merchandize and premises, by all lawful means and ways whatsoever, and upon the receipt thereof good and effectual acquittances and acknowledgements in my name or otherwise, to sign and give, and moreover to act in all things whatsoever concerning the premises, as I or my executors or administrators might have done, if these presents had not been made. And, &c. (*Covenant that Bill of Sale is good, &c.* (1)). IN WITNESS, &c.

(1) See *post.* p. 455. 461.

Stamp.

*** *Ad valorem* duty on the consideration money; see schedule of stamp-act, *post.* Vol. III. "TAMP."

ASSIGNMENTS.
Bill of Sale (conditional).

No. CXXIX.

An Assignment of a Conditional Bill *of* Sale *of Goods, &c.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*assignor*), of, &c. SENDETH GREETING, WHEREAS (*original assignor*) of, &c. in, and by his deed or bill of sale bearing date on or about the day of , which was in the year (and which is annexed or underwritten to these presents) bargained, sold and assigned unto the said (*assignor*) all and every his goods, wares and merchandizes of him the said (*original assignor*) being in a warehouse belonging to Messrs. , situated at, &c. TO HOLD the same unto the said (*assignor*), his executors, administrators and assigns for ever (as by the said recited deed or bill of sale and the schedule thereunto annexed, reference being thereunto had, will more fully appear), but subject to a proviso or condition therein contained, that if the said (*original assignor*), his executors, administrators or assigns, should pay or cause to be paid unto the said (*present assignor*), his executors, administrators or assigns, the full sum of £ of lawful money of Great Britain, (then justly owing to the said (*present assignor*) by the said (*original assignor*)) on the day of then next, together with interest for the same after the rate of £5. per cent. per annum, then the said bill of sale and everything therein contained should be void. AND WHEREAS the said sum of £ was not paid at the time in the said proviso mentioned for payment thereof, whereby the said bill of sale became and still is absolute at law, but all interest thereupon has been paid up to the day of last. AND WHEREAS (*assignee*) of, &c. has agreed with the said (*assignor*) for an assignment of the said bill of sale and the money due thereupon, for the sum of £ . NOW KNOW YE, that for and in consideration of the sum of £ of lawful and current money of the United Kingdom of Great Britain and Ireland, to the said (*assignor*) in hand well and truly paid by the said (*assignee*) (the receipt whereof the said (*assignor*) doth hereby acknowledge), HE the said (*assignor*) HATH bargained,

Recital of the conditional bill of sale.

WITNESS. Assignor assigns.

ASSIGNMENTS.

Bill of Sale (conditional).

sold and assigned, and by these presents in plain and open market DOTH bargain, sell and assign unto the said (*assignee*), all and every the goods, wares and merchandizes in the said deed or bill of sale and schedule thereunto annexed or underwritten respectively mentioned, and to the said (*assignor*) bargained and sold or expressed so to be as aforesaid, and all and every the principal and interest money, now due or hereafter to grow or become due therefrom, and all the right, title, benefit, claim and demand whatsoever of him the said (*assignor*), in or relating thereto, under or by virtue of the said deed or bill of sale or otherwise howsoever.

To hold to new assignee.

TO HAVE, HOLD, receive, take and enjoy all and singular the said goods, wares and merchandizes, monies and all other the premises hereby assigned or otherwise assured or intended so to be, with the appurtenances, unto the said (*assignee*), his executors, administrators and assigns, as his and their own proper goods, monies and effects, free and clear of all former and other debts, charges, liens and encumbrances whatsoever, committed done or suffered by him the said (*assignor*) or the said (*original assignor*), or any other person or persons whatsoever, but subject nevertheless to such right or equity of redemption in the said (*original assignor*) under or by virtue of the proviso or condition in the said in part recited deed poll or bill of sale contained in that behalf, as is or may be still subsisting or capable of being enforced.

Subject to subsisting right of redemption.

AND, &c. (*Add a Covenant that debt subsisting, &c.* (1) *and Power of Attorney*). (2) IN WITNESS, &c.

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(1) See *post.* 468. (2) See *ante*, p. 450, *post.* p. 454. 461.

Stamp.

*** *Ad valorem* duty on the consideration for the assignment, see schedule to Stamp-Act, *post.* Vol. III. "STAMP."

No. CXXX.

Assignment of a Bond (1) *given to the Sheriff by a Gaoler or Keeper, and Sureties.*

THIS INDENTURE, made the day of in the year of our Lord 18 , BETWEEN (*assignor being the sheriff or obligee*) of, &c. of the one part, and (*assignee*) of, &c. of the other part. WHEREAS (*obligors*) of, &c., by their bond or obligation in writing under their hands and seals, bearing date the day of , 18 , reciting THAT the said (*assignor*) by authority from the deputy marshal [*or as the case may be*] of the Marshalsea of his Majesty's most honourable household and of the prisoners therein being, and also sub-martial of the court of our sovereign Lord the King of the King's Palace at Westminster, and keeper of the prison of the said court and the prisoners therein being, had, by and with the approbation of the marshal of the said household and one of the judges of the said palace court, the custody and safe keeping of the prisoners in the Marshalsea prison in Southwark being, under his care and charge, and admitted him the said (*keeper*) to be a servant to him the said (*assignor*) in the place and office of clerk of the keeper of the prison, during the will and pleasure of him the said (*assignor*), and it was conditioned by the said bond or obligation that if the said (*obligors*) should protect and keep harmless the said (*assignor*) against all escapes which should happen by the neglect, privity or consent of the said (*keeper*) or any person employed by him, of any prisoner or prisoners then or thereafter committed unto or left in the custody of the said (*deputy marshal*) or the said (*assignor*) during the time the said (*keeper*) should continue servant or keeper's clerk as aforesaid; and from all actions and suits which should be brought against the said (*marshal or deputy marshal*) or the said (*assignor*) by reason of such escapes; and from all damages and demands which the said (*marshal or deputy marshal*) or the said (*assignor*) or his securities should sustain concerning the same, or any other thing happening by reason of the nonperformance, misperformance or negligence of the said (*keeper*) in his said office. AND

Recitals of bond of the assignor.

(1) See *post.* No. CXXXV. notes.

ASSIGNMENTS.
Bond.

also if the said (*keeper*) at all times thereafter should make a just and true account with and payment to the said (*assignor*) or the said (*marshal*), or to any of the judges or officers of the said court belonging, which he or any person entrusted by him should receive of any prisoners or other persons, or for which he should give credit to any prisoners or other persons; and also if the said (*keeper*) should pay the said (*assignor*) all such sums of money as he or any one entrusted by him should receive for the use of any plaintiff or plaintiffs at whose suit any prisoner then did or hereafter should stand charged with in the custody of the said (*deputy marshal*) or the said (*assignor*) in the said prison; and if he, the said (*keeper*) should faithfully perform all other services and things which to the said office or place of keeper as aforesaid of the said (*assignor*) should belong during his continuance in such office, then the said obligation was to be void, or else to remain in full force and virtue, as by the said bond or obligation relation being thereunto had will more fully appear. AND WHEREAS the said (*keeper*) is justly indebted to the said (*assignor*) in the sum of £ for fines and fees received by him for the use of the said (*assignor*), as by an acknowledgement thereof under the hand of the said (*keeper*), bearing date on or about the day of doth appear,

Money due upon said bond.

WITNESS. The assignor therefore assigns bond and monies due thereupon.

NOW THIS INDENTURE WITNESSETH that for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland to the said (*assignor*) in hand paid by the said (*assignee*) at or before the sealing and delivery of these presents, the receipt whereof the said (*assignor*) doth hereby acknowledge, [and thereof and therefrom doth acquit, release and discharge the said (*assignee*), his executors, administrators and assigns, by these presents] he the said (*assignor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over unto the said (*assignee*), his executors, administrators and assigns, ALL that the said in part recited bond or obligation, and all that the said sum of £ so due and owing by or from the said (*obligor*) to the said (*assignor*), as aforesaid, and all the estate, right, title, interest, claim and demand whatsoever, of him the said (*assignor*),

To hold absolutely.

TO HAVE AND TO HOLD the said bond or obligation, sum of money and other the premises hereby assigned or otherwise assured or intended so to be, unto and by him the said (*assignee*), his executors, administrators and assigns, to his and their own proper use and benefit.

Power of attorney.

AND for the consideration aforesaid, he the said (*assignor*) hath made, ordained, constituted and appointed, and by these presents DOTH make, ordain, constitute and appoint the said (*assignee*), his ex-

ASSIGNMENTS
Bond.

ecutors, administrators and assigns, his true and lawful attorney and attornies irrevocable in the name of him the said (*assignor*), or in his or their own name or names, but to and for the sole proper use and behoof of him the said (*assignee*), his executors, administrators and assigns, to ask, demand, sue for, recover and receive, of and from the said (*obligors*) or any or either of them, their, any or either of their heirs, executors or administrators, the said hereby assigned premises, and every part thereof, and upon receipt thereof, or of any part thereof, acquittances or other discharges in the name of him the said (*assignor*), or in his or their own name or names, to make, seal and deliver; and for nonpayment thereof, to arrest, imprison, implead and out of prison to deliver the said (*obligors*), or any or either of them, their, any or either of their heirs, executors or administrators; and to agree and compound for the same as shall seem requisite to him the said (*assignee*), his executors, administrators or assigns, giving and hereby granting unto his said attorney full power to act and do in the premises as fully to all intents and purposes as he the said (*assignor*) might or could have done if these presents had not been made. AND the said (*assignor*), for himself, his executors, administrators and assigns, DOTH covenant, promise and agree with and to the said (*assignee*), his executors, administrators and assigns, by these presents, that the said bond or obligation now stands in full force and virtue, and that he the said (*assignor*) hath not done nor hereafter shall or will do any act, matter or thing whatsoever, whereby to release or discharge the said bond or obligation or the said sum of £ hereby assigned or any part thereof, nor revoke the power and authority hereby given, or obstruct or hinder the said (*assignee*), his executors, administrators or assigns, in recovering, receiving and getting in the same; but shall and will permit and suffer him the said (*assignee*), his executors, administrators or assigns, peaceably and quietly to recover and receive the said assigned premises to his and their own use and uses, hereby ratifying and confirming all and whatsoever the said (*assignee*), his executors, administrators or assigns shall lawfully do or cause to be done in or about the execution of these premises by virtue of these presents. AND FURTHER, that he the said (*assignor*), his executors, administrators and assigns, shall and will from time to time and at all times hereafter, at the request, costs and charges of the said (*assignee*), his executors, administrators or assigns, make, do and execute such further and other assurances in the law for the better assigning the said premises and enabling him the said (*assignee*), his executors, ad-

Covenant that the bond is in full force and shall so remain.

Covenant for further assurance.

ASSIGNMENTS.

Bond.

ministrators and assigns, to recover, receive and get in the same, as he or they, or his or their counsel, shall reasonably advise and require. AND the said (*assignee*), for himself, his heirs, executors, administrators and assigns, DOTH covenant, promise and agree, to and with the said (*assignor*), his executors, administrators and assigns, by these presents, that he the said (*assignee*), his executors, administrators and assigns, or some or one of them, shall and will from time to time, and at all times hereafter, well and sufficiently save and defend, keep harmless and indemnified the said (*assignor*), his executors and administrators, and his and their goods and chattels, lands and tenements, of, from and against all costs, damages and expences which shall or may happen or come to him or them, for or by reason or means of any action or actions, suit or suits, or other proceedings whatsoever, to be had, made, brought or prosecuted by him the said (*assignee*), his executors, administrators or assigns, in the name of the said (*assignor*), his executors or administrators, by virtue of any power or authority herein or hereby given. IN WITNESS, &c.

Covenant by assignee to indemnify assignor from costs &c.

Stamp.

*** *Ad valorem* duty on the consideration for the assignment.

No. CXXXI.

An Assignment of Indentures of Clerkship (1).

Variation where the Assignment is by the Executors of the deceased Master. (2)

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN (*the former master*) (3) of, &c. of the first part, (*the father of the clerk*) of, &c. and (*clerk*), son of the said (*father*) of the second part, and (*the new master*) of, &c. of the third part. WHEREAS by articles of clerkship bearing date the day of , which was in the year , and made or expressed to be made between the said (*father of the clerk*) and (*clerk*) of the one part, and the said (*former master*) of the other part, the said (*clerk*) was placed with the said (*former master*) as his articled clerk, to be taught and instructed in the profession or practice of an attorney and solicitor, for the term of five years thence next ensuing, under and subject to the several terms, covenants, and conditions therein contained (4). AND WHEREAS the

Parties.

Recital of articles of clerkship.

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(1) See *ante*, No. CXXV. p. 438, notes.

(2) By 22 Geo. 2. c. 46. it is enacted, with respect to articled clerks, that if the master shall die, or discontinue to practise, or the contract be cancelled by consent, or the clerk be discharged by rule of Court, such clerk may be bound to another master for the remainder of the term.

Articled clerks assignable by statute.

(3) If the assignment be by the executor of the deceased master, say, "(*The executor*) of, &c. executor of the last will and testament of (*the former master*), deceased, of the first part."

Assignment by executor of former master.

(4) If the apprentice be assigned by the executor of his deceased master, say,

Assignment by executor.

"AND WHEREAS the said (*former master*) departed this life on or about the day of last past, having first made and duly published his last will and testament in writing, and appointed he said (*executor*) the sole executor thereof. AND WHEREAS the said (*clerk*), at the time of the decease of the said (*former master*),

ASSIGNMENTS.
Clerkship.

said (*clerk*) hath served with the said (*former master*) years of his said apprenticeship, and it hath been agreed by and between the said parties hereto, that he shall be assigned over unto the said (*new master*) for the residue of the said term of five years now to come and unexpired. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, HE, the said (*former master*), at the request, and with the consent and approbation as well of the said (*father*) as of the said (*clerk*), testified by their respectively being parties to, and signing and sealing these presents, HATH assigned, transferred, and set over, and by these presents DOTH assign, transfer, and set over unto the said (*new master*) the hereinbefore in part recited indenture of clerkship, and all benefit and advantage whatsoever incident thereto, and also all and all manner of interest, property, profit, or advantage, claim and demand whatsoever of him the said (*former master*), of, in, or to the same, and the service or duty of him the said (*clerk*) during the residue and remainder now to come and unexpired of the said term of five years, under or by force or virtue of the said hereinbefore in part recited indenture of apprenticeship, or otherwise howsoever. TO HAVE AND TO HOLD the said in part recited indenture of clerkship, and all the right, title, interest, term, benefit, claim, and demand whatsoever, of him the said (*former master*), of, in, or to the same, and to the service or duty of the said (*clerk*) under the same, unto the said (*new master*), his executors, administrators, and assigns, from henceforth, for and during all the residue and remainder of the term of five years, which is, or may be yet to come and unexpired, and that in as ample and beneficial a manner and form, to all intents and purposes whatsoever, as he the said (*former master*) might, could, or ought to have holden and enjoyed the same, by force or virtue of the hereinbefore in part recited indenture of clerkship, or otherwise howsoever, if these presents had not been made. And the said (*new master*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said (*father*) and (*former master*) respectively, and their respective executors and administrators, in manner following, (that is

Recital of service for part of the term.

WITNESS. Former master assigns

to new master.

Covenant by new master to instruct apprentice.

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had served years and upwards of his said clerkship under the said in part recited articles. AND WHEREAS the said (*intended master*), at the request of the said (*executor*), hath agreed to take the said (*clerk*) as his clerk for the residue of the said term of five years now to come and unexpired."

to say), that he the said (*new master*) shall and will, at all times during the residue of the said term of seven years now to come and unexpired, teach and instruct, or cause to be taught and instructed, according to the best of his skill and knowledge, the said (*clerk*) in the said profession or practice of an attorney and solicitor, and all and every the matters and things incident or relating thereto, and perform and observe all and every the covenants, clauses, provisoes, and agreements in the said in part recited indenture of clerkship contained on the part and behalf of the said (*former master*), his executors and administrators, to be performed and observed; and save, defend, keep harmless, and indemnified, the said (*former master*), his executors and administrators, of and from the same and every of them respectively. And lastly, each of them the said (*former master*) and (*new master*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*father*), his executors and administrators, and also with and to the said (*clerk*) in manner following (that is to say), that they the said (*former master*) and (*new master*) shall and will, at the expiration of the said term of five years, and at the request, costs and charges of the said (*clerk*), make several affidavits of the respective times of service of him the said (*clerk*) with them the said (*former master*) and (*new master*), and also do all such other acts as shall be requisite or expedient for the purpose of getting him the said (*clerk*) admitted as an attorney or solicitor in all, any or either of his Majesty's courts at Westminster, or of such other court in or of which he the said (*clerk*) shall think fit to be admitted an attorney or solicitor (1). And the said (*father*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*new master*), his executors, administrators, and assigns, in manner following (that is to say), that the said (*clerk*) shall and will at all times during the residue and remainder now to come and unexpired of the said term of five years, well, truly, and faithfully serve the said (*new master*) as an apprenticed clerk in the said profession or practice of an attorney and solicitor, in like manner in all respects as he is or was bounden to serve the said (*former master*) in or by the hereinbefore in part re-

Covenant by former and intended master to make affidavits of service.

Covenant by father for son's due service.

(1) If the assignment be by the executors of a deceased master, and there be any interval between the death of the old master and the assignment to the new, the court will not allow the clerk to be admitted until he has served out the time lost with the new master. See 2 Chitty Rep. 61.

ASSIGNMENTS. *Clerkship.*

cited indenture; and that he the said (*father*) shall and will perform and observe all and every the covenants and agreements therein contained on his part and behalf to be performed and observed, in like manner as if the same had been again repeated or contained in these presents. IN WITNESS, &c.

Stamp.

*** By 55 Geo. III. c. 184., a stamp duty of £1 15*s*. only is necessary in an assignment of a contract under which a clerk is to serve for the residue of the term for which he was originally bound, in consequence of the death of his former master, or any other event; and the like stamp is required for a counterpart; see the schedule to the above act, *post*. Vol. III., head "STAMP".

ASSIGNMENTS.
Cargo.

No. CXXXII.

*An Assignment of a Cargo on board a ship.

Variation where it is of part only of the cargo.

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the assignor*) of, &c. owner [*or* part owner *if so*] of the ship or vessel called the of the burthen of tons or thereabouts, whereof (*master*) is master, SENDS GREETING. WHEREAS there is a cargo or adventure of [*name the goods, &c.*] on board the said ship at [one- part whereof belongeth to and is] the property of the said [part] owners of the said ship. AND WHEREAS the said (*assignee*) hath, at or before the sealing hereof, paid unto the said (*assignor*) the sum of £ for [his part of] the cost of the said cargo, the receipt whereof the said (*owner*) doth hereby acknowledge. NOW KNOW YE, that for and in consideration of the said sum of £ so paid unto the said (*assignor*) by the said (*assignee*) as aforesaid, he the said (*assignor*) HATH bargained, sold, and assigned and set over, and by these presents DOTH bargain, sell, assign and set over unto the said (*assignee*) ALL that [full and equal part of] the cargo of (*goods*) on board the said ship , and [of and in] all the produce, proceeds, effects, gains and advantages by and in respect thereof, and all his right, title, claim and demand of, in and to the same; TO HAVE, hold and receive the same unto and by him the said (*assignee*), his executors, administrators and assigns, for his and their own proper use and benefit, and as his and their own proper goods and chattels, for ever. AND, &c. (*power of attorney*) (1). AND the said (*assignor*) for himself, his executors and administrators, doth covenant, declare and agree to and with the said (*assignee*), his executors, administrators and assigns, by these presents, in the manner following, (that is to say) that he the said (*assignee*), his executors, administrators and assigns, shall and lawfully may

Recital of cargo.

WITNESS.
Owner assigns.

To hold to assignee absolutely.

Covenant to assignor for quiet enjoyment.

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(1) See *ante*, p. 450.

ASSIGNMENTS.
Cargo

at all times hereafter have, take, receive and enjoy, to and for his and their own use and benefit [full and equal part of] all and every the produce, effects, proceeds, profits and advantages to be had, made or derived from or in respect of the said cargo or adventure, or goods and merchandize laden on board the said ship without any let, suit, trouble, denial or interruption of or by the said (*assignor*), his executors or administrators; and that free and clear of and from all former and other bargains, sales, assignments, debts, charges, liens and encumbrances whatsoever by him the said (*assignor*) committed, done or knowingly suffered.

Further assurance.

AND further, that he the said (*assignor*), his executors and administrators, shall and will at all times hereafter do, perform and execute, and cause to be done, performed and executed all such further and other acts, deeds and things for the better or more satisfactorily assigning and assuring the goods and premises so hereby sold and assigned unto the said (*assignee*), his executors, administrators and assigns, as aforesaid, or intended so to be, and for enabling him and them to demand and receive, and have and retain the same to his and their own proper use and benefit as by him or them, or his or their counsel in the law, shall be reasonably advised or required. IN WITNESS, &c.

Stamp.

*** *Ad valorem* on the amount of the consideration paid for the assignment; see *post.* Vol. III. "STAMP."

No. CXXXIII.

**An Assignment by a Master, to a part Owner of a Ship, of his proportion of a* Debenture *made for the Ship's hire.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the master*) of, &c. master of the ship or vessel called the of the burthen of tons or thereabouts, late in his Majesty's transport service [*or as the case may be*], SENDS GREETING. WHEREAS there is now due and owing from his Majesty's Government to the owners of the said ship for the service and employ thereof, the sum of £ , for which sum several debentures have been made out, and signed by the commissioners of his Majesty's transport service, unto and in the name of the said (*master*), but for the use of the said owners respectively. AND whereas (*the assignee*) of, &c. is the owner of parts of the said ship, and there is due and belonging to him the sum of £ , part of the aforesaid sum of £ , for his said part, in the said ship. NOW THEREFORE KNOW YE, that the said (*master*) by reason and in consideration of the sum of £ , part of the said sum of £ , being so due and belonging to the said (*assignee*) as aforesaid and in order that he may have and receive the same; [and in consideration of the sum of 5*s.*, to him the said (*master*) in hand well and truly paid by the said (*assignee*), the receipt whereof is hereby acknowledged] he the said (*master*) HATH bargained, sold and assigned, and by these presents DOTH bargain, sell, and assign unto the said (*assignee*), his executors, administrators and assigns, ALL that the said sum of £ , part of the said sum of £ , so now due and belonging from his Majesty's Government to the owners of the said ship (*name*) and for which debentures have been made out as aforesaid, and also part of the same debentures, and all benefit and advantage thereof, and all the right and title of him the said (*master*) in or to the same, TO HAVE, HOLD, receive and take the said sum of £ deben-

Recital of debenture.

Master assigns to part owner.

ASSIGNMENTS.
Debenture.

tures and premises hereby assigned or intended so to be, unto and by him the said (*assignee*) his executors, administrators and assigns, as his and their own proper monies and effects. And, &c. [*add covenant by the master that he has not released, &c.* (1) *and power of attorney* (2)]. IN WITNESS, &c.

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(1) See *ante*, p. 455. *post*. 468. (2) See *ante*, p. 450. *post*. 467.

Stamp.

*** The above assignment will require only a common deed stamp of £1 15*s*.; see *post* Vol. III. "STAMP".

No. CXXXIV.

An Assignment of a Simple Contract Debt (1).

THIS INDENTURE (2) made the day of , in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN (*the assignor*) of, &c. of the one part, and (*the assignee*) of, &c. of the other part. WHEREAS (*the debtor*) of, &c. is in- Recital of debt.

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(1) Debts of every kind being outstanding interests, are what are called choses in action, i. e. things reducible into possession only by *action* or suit at law, hence an assignment of a debt comes within the general principles of *maintenance*, or the transfer of a cause of action to a stranger, which was prohibited by "the wisdom and policy of the founders of our law, lest it should give rise to suits and contentions." See Co. Lit. 266; 2 Roll. Ab. 45. F. pl. 6; Skin. 6. 26; Lampet's Ca. 10 Co. 48. a.; with the exception of promissory notes, and some other things assignable by particular acts of parliament; and also except in the case of the King, see 2 Ves. 181; see 3 and 4 Ann. c. 9; 4 and 5 Ann. c. 16. But where assignments of choses in action were made for a valuable consideration, they were always supported by the Courts of Equity upon principles of natural justice, entitling a man to receive what he had paid for; see 3 Ch. Rep. 90; Robinson v. Bavasor, 3 Vin. Ab. 155. pl. 29; Browne v. Heathcote, 1 Atk. 160; Wright v. Wright, 1 Ves. 411; Crouch v. Martin, 2 Vern. 595; and although the assignment be without any valuable consideration it will be good as against the assignor himself and his representative; Wright v. Wright, 1 Ves. 409. The rigid doctrine which anciently prevailed on the assignment of choses in action is now greatly relaxed in the Courts of law also; see Master v. Miller, 4 Durnf. and E. 320; and the assignee is recognised even by those Courts, subject only to a qualification with respect to the form to be pursued in the proceedings for the recovery of the thing assigned; see Wright v. Bell, Dan. 95. 5 Pri. 325. S. C.

Debts not assignable at law; but are in equity, if for a valuable consideration.

(2) It is not absolutely necessary that the assignment of a chose in action should be by deed, for not being strictly transferable from one person to another, the instrument of assignment is to be considered rather as evidence of the parting with the right of the assignor, than as transfering the thing itself to the assignee: see Howell v. Mac Ivers et al. 4 Durnf. and E. 693.

Need not be by deed.

ASSIGNMENTS.

Debt (simple contract).

debted (1) unto the said (*assignor*) in the sum of £ (2) for goods sold and delivered [*or as the case may be*]. AND WHEREAS the said (*assignor*) hath agreed with the said (*assignee*) to assign to him the said debt, in consideration of the sum of £ , NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*assignor*), in hand well and truly paid by the said (*assignee*) at or before the sealing of these presents, the receipt whereof the said (*assignor*) doth hereby acknowledge, and of and from the same doth acquit, release, exonerate, and for ever discharge the said (*assignee*), his executors, administrators and assigns, as well by these presents as by the receipt for the same sum hereupon indorsed, HE the said (*assignor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over, unto the said (*assignee*), his executors, administrators and assigns, ALL that the said debt or sum of £ so now due and owning unto him the said (*assignor*) by the said (*debtor*), and all the estate, right, title, interest, claim and demand whatsoever, both in law and in equity, of him the said (*assignor*), of, in or to the same, or any part thereof (3), TO HAVE, HOLD, receive and take, the said debt or sum of £ , and other

WITNESS. That in consideration of £

the assignor assigns the debt.

To hold to the assignee absolutely.

Simple contract debts not recoverable after six years.

(1) It is to be noticed that a simple contract debt is not recoverable (and of course cannot be the subject of an assignment) after the lapse of a period of six years from the time of its being contracted, unless it has been since acknowledged to be due; 21 Jac. 1. c. 16.

Debtor a bankrupt.

(2) If a commission of bankrupt have been issued against the debtor, say,

"WHEREAS (*the debtor*) of, &c. is justly indebted unto the said (*assignor*) in the sum of £ for goods sold and delivered [*or as the case may be*]. AND WHEREAS a commission of bankrupt, under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the day of last past, hath been awarded against the said (*debtor*), and he hath been thereupon duly found and declared a bankrupt. AND WHEREAS the said (*assignor*) hath come in and proved his said debt under the said commission, but hath not received any dividend from the estate and effects of the said (*debtor*) in respect thereof. AND WHEREAS the said (*assignor*) hath agreed, &c." *as above.*

Debtor a bankrupt.

(3) If the debtor be a bankrupt, say,

"Together with all and every sum and sums of money, dividend and dividends, benefit and advantage whatsoever, which now hath or

ASSIGNMENTS.
Debt (simple contract).

the premises hereby assigned, or mentioned or intended so to be, unto and by him the said (*assignee*), his executors, administrators and assigns, to and for his and their own proper use and benefit, without any account or satisfaction to be hereafter rendered or given to the said (*assignor*), his executors, administrators or assigns, for or concerning the same. AND for the better and more effectually enabling the said (*assignee*), his executors, administrators and assigns, to enforce the payment of, and receive the said assigned premises, he the said (*assignor*) hath made, deputed, constituted and appointed, and by these presents doth make, depute, constitute and appoint the said (*assignee*), his executors, administrators and assigns, his true and lawful attorney and attornies (1) irrevocable, for him the said (*assignor*), and in his name, and in the name or names of his executors or administrators, but for the sole and proper use and benefit of the said (*assignee*), his executors, administrators and assigns, to demand, sue for, recover, and receive from the said (*debtor*), and all and every other the person or persons to whom it shall and may belong to pay the same, the said debt or sum of £ , together with all and every the sum and sums of money from time to time to grow due, or be payable in respect thereof; and upon non-payment thereof to use and take all such lawful and equitable ways and means for obtaining or recovering the same as shall be deemed necessary or expedient in that behalf, and on payment thereof to give sufficient releases and discharges for the money due thereon; and one or more attorney or attornies under him the said (*assignee*), his executors, administrators or assigns, for any of the purposes aforesaid, to nominate, substitute or appoint, and from time to time to remove and displace as he or they shall think fit; he the said (*assignor*) hereby transferring and giving unto the said (*assignee*), his executors, administrators and assigns, his full and whole power and

Letter of attorney.

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hereafter shall or may be received, or arise by virtue of the said commission of bankrupt, or otherwise howsoever, for or in respect of the said debt or sum of £ ."

(1) Although debts are now recognized as assignable interests, contrary to the doctrine of the old common law, see ante p. 465, n. (1), yet in compliance with the ancient principles they must still be sued for in the name of the assignor, and not of the assignee, who is considered rather as an attorney or agent of the assignor than as a person beneficially entitled to the money; Delany v. Stoddart, 1 Durnf. and E. 26; Winch v. Keeley, ib. 619; and he is usually therefore specially appointed for that purpose by the deed of assignment.

Letter of attorney.

ASSIGNMENTS.
Debt (simple contract).

authority in the premises to every intent and purpose, and ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever he or they shall lawfully do or cause to be done in or about the premises, by virtue of these presents. AND the said (*assignor*), for himself, his heirs, executors and administrators, doth hereby covenant, promise, declare and agree, with and to the said (*assignee*), his executors, administrators and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter or thing whatsoever, by him the said (*assignor*) made, done, committed or suffered to the contrary, the said debt or sum of £ is still due and owing to him the said (*assignor*); and that for and notwithstanding any such act, deed, matter or thing, as aforesaid, he the said (*assignor*) at the time of the sealing and delivery of these presents, hath in himself good right, and full and lawful power and authority to assign and transfer the said debt or sum of £ and premises unto the said (*assignee*), his executors, administrators and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. And that he the said (*assignor*), his executors or administrators, shall not nor will at any time hereafter receive the said debt or sum of £ , or any part thereof, nor make, do, execute, or knowingly occasion or suffer any act, deed, matter or thing whatsoever, whereby or by means or in consequence whereof, the said (*assignee*), his executors, administrators or assigns, shall or may be prevented or hindered from recovering, enforcing payment of, or receiving the same, or any part thereof. And also that he the said (*assignor*), his executors and administrators, shall and will at any time or times hereafter, at the request and expence of the said (*assignee*), his executors, administrators and assigns, do and execute all such further and other lawful and reasonable acts, deeds, matters and things whatsoever, not only for the better and more effectually and satisfactorily assigning the said debt or sum of £ unto the said (*assignee*), his executors, administrators and assigns, but also for assigning the same unto any other person or persons whomsoever, and enabling the said (*assignee*), his executors, administrators and assigns, or the said person or persons to recover and receive the same to and for his own and their proper use and benefit, or otherwise, as he or they, or his or their counsel in the law of the degree of a barrister, shall advise or require. AND the said (*assignee*) doth hereby for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the said (*assignor*), his executors, administrators, and assigns, in manner following, (that is to say) that he the said (*assignee*), his executors, ad-

Covenant by assignor that the debt is subsisting.

Will not receive the debt.

Further assurance.

Covenant by assignee to indemnify assignor.

ASSIGNMENTS.
Debt (simple contract).

ministrators, and assigns, shall and will from time to time, and all times hereafter, save, defend, keep harmless, and indemnified the said (*assignor*), his heirs, executors, and administrators, of, from, and against all costs, charges, damages, and expenses whatsoever, which shall or may in any manner fall upon, be recovered against, or become payable by the said (*assignor*), his executors, or administrators, for or by reason or means of any action or suit, or other legal or equitable proceeding which shall or may be brought or prosecuted by him the said (*assignee*), his executors, administrators, or assigns, in the name or names of him the said (*assignor*), his executors or administrators, by virtue of these presents, or of any power or authority herein contained. IN WITNESS, &c.

*** *Ad valorem* on the amount of the consideration paid; see *post* Vol. III. "STAMP." Stamp.

ASSIGNMENTS.
Debt (bond).

No. CXXXV.

Assignment of a Bond (1), *for Payment of Money.*

Variations where a judgment entered upon the bond is also assigned. Where the bond is for the transfer of stock.

THIS INDENTURE of two parts, made the day of , in the year of the reign &c. and in the year of our Lord 18 , BETWEEN (2) the (*assignor*), of, &c. of the one part, and the (*assignee*) of, &c. of the other part. WHEREAS by a bond or obligation in writing under the hand and seal of the (*obligor*) of, &c. bearing date the day of , which was in the year , the said (*obligor*) became bounden for himself and his heirs to the said (*assignor*), his executors, administrators and assigns, in the penal sum of £ , with a condition thereunder written for making void the same on payment

Recital of a bond for payment of money.

Bond assignable in equity, but not at law.

(1) An assignment of a bond, like other choses in actions, though not good at law, Co. Lit. 266. a.; 2 Roll. Ab. 45. F. pl. 8.; Ex parte Lee, 1 P. Wms. 782; Medlicot's Ca. 2 Stra. 899; will be supported in equity if made for a valuable consideration; Crouch v. Martin, 2 Vern. 595; Browne v. Heathcote, 1 Atk. 160; Munn v. E. I. Company, Rep. Temp. Finch, 299; unless it be given for some special purpose; Cator v. Burke, 1 Brow. Ch. Ca. 434; and payment to the obligee after notice of the assignment, will be bad; Baldwin v. Billingsly, 2 Vern. 539; Ashcomb's Ca. 1 Ch. Ca. 232; but the assignee must take the bond subject to all the equity that may attach upon it; Coles v. Jones, 2 Vern. 692; Turton v. Benson, 2 Vern. 765. But it is to be remarked, that no assignment should be taken of a bond after twenty years, without proof of a previous demand of principal or interest, or other evidence of the debt being still subsisting, as it is now an invariable rule for the judges to direct a jury to find a bond satisfied after the lapse of that period, without demand or acknowledgment; see Gratwick v. Simpson, 2 Atk. 144; Leman v. Newnham, 1 Ves. 51; Glynn v. Bank of England, 2 Ves. 43; Oswald v. Leigh, 1 Durnf. and E. 270; Colsell v. Budd, 1 Campb. 27.

Bond of 20 years' date presumed to be satisfied.

Obligee should be a party to assignment of old bond.

(2) If the bond has been previously assigned, the obligee should be a party, particularly if it be of an old date, as he may have received the money; Brace v. Harrington, 2 Atk. 235.

ASSIGNMENTS.
Debt (bond).

(1) of the sum of £ , together with interest for the same after the rate of 5 per cent. per annum, on the day of then next ensuing (2). AND WHEREAS there now remains due to the said (*assignor*) the sum of £ for principal and interest on the said

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(1) If the bond be for the transfer of stock, say,

Transfer of stock.

"With a condition thereunder written for making void the same, on transferring the sum of £ three per cent. Consolidated Bank Annuities into the name of the said (*assignor*), his executors, administrators, and assigns, in the books of the Governor and Company of the Bank of England, on the day of then next ensuing, and paying in the mean time, and until such transfer, such sum and sums of money as would be equal to the dividends thereof."

* If the assignment be of a bond of indemnity, say,

Bond of indemnity.

"WITH a consideration thereunder written for indemnifying and saving harmless the said (*assignor*) his heirs, executors, administrators and assigns, from and against all and every the covenants, payments, agreements, matters and things contained or referred to in or by a certain indenture of the day of therein recited."

If the bond be for the performance of covenants, say,

Bond for performance of covenants.

"WITH a consideration thereunder written, for the performance and observance of certain covenants, clauses, provisoes and agreements contained in an indenture of the day of therein recited."

(2) If judgment obtained by a warrant of attorney be also assigned, say,

Judgment on warrant of attorney.

"AND WHEREAS for the better securing the payment of the said sum of £ , the said (*obligor*) executed a warrant of attorney, bearing even date with the said bond, authorising certain attornies therein named to confess judgment thereupon in his Majesty's Court of . AND WHEREAS judgment was confessed and entered up on record of the said Court as of term then next ensuing, as by reference thereto will more fully appear."

If the judgment were obtained in an action of debt, say,

Judgment obtained in an action of debt.

"AND WHEREAS default being made in payment of the said sum of £ and interest, on the day mentioned in the condition of the said in part recited bond, HE the said (*assignor*) did, in term last past, obtain a judgment in his Majesty's Court of at Westminster, in an action of debt on the said bond, for the sum of £ besides costs of suit, against him the said (*obligor*), as by the record of the said judgment, reference being thereto had, will more fully and at large appear."

ASSIGNMENTS.
Debt (bond).

bond (1). AND WHEREAS the said (*assignor*), in consideration of the sum of £ , hath agreed to assign the hereinbefore in part recited bond, and all principal and interest monies thereby secured. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*assignor*) in hand well and truly paid by the said (*assignee*), at or immediately before the sealing and delivery of these presents, the receipt whereof the said (*assignor*) doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*assignee*), his executors, administrators and assigns, as well by these presents as by the receipt for the same sum hereupon indorsed, HE the said (*assignor*), HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over unto the said (*assignee*), his executors, administrators and assigns, ALL (2) that the hereinbefore in part recited bond or obligation, made and entered into by the said (*obligor*) unto the said (*assignor*), his executors, administrators and assigns, in the penal sum of £ , and also all that the said penal sum, and also all benefit and advantage whatsoever to be had or derived

WITNESS. That in consideration of £

the assignor assigns the bond.

Bond previously assigned.

(1) If the bond have been previously assigned, add,

"AND WHEREAS by indenture bearing date the day of . and made or expressed to be made between (*the obligee*) of, &c. of the one part, and the said (*present assignor*) of the other part, the said (*obligee*) assigned over the said bond or obligation, and the said sum of £ due thereon, unto and for the sole use and benefit of the said (*present assignor*), his executors, administrators and assigns."

Judgment.

(2) If the assignment be of a judgment recovered on the bond, say,

"All that the said bond or obligation entered into by the said (*obligor*) unto the said (*assignor*) his executors, administrators and assigns, in the penal sum of £ , together with the judgment so recovered thereon as aforesaid, and all benefit and advantage whatsoever, to be had or derived therefrom, or from any process, extent, or other executions or execution to be thereupon had, sued out, or executed."

Bond of indemnity, &c.

* The form of the remainder of the precedent will be the same for whichever purpose supposed by the preceding variations the bond was given.

ASSIGNMENT.

Debt (bond).

thereupon, and all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity of him the said (*assignor*) in, to, or concerning the same, TO HAVE AND TO HOLD the said bond or obligation, penal sum and other the premises hereby assigned, or mentioned or intended so to be, unto the said (*assignee*) his executors, administrators and assigns, to and for his and their own proper use and benefit. AND for the better and more effectually enabling the said (*assignee*), his executors, administrators and assigns, to enforce the payment of and receive the monies due, or to become due upon the said bond, he the said (*assignor*) hath made, deputed, constituted and appointed, and by these presents doth make, depute, constitute and appoint the said (*assignee*), his executors, administrators and assigns, his true and lawful attorney and attornies, irrevocable, for him the said (*assignor*), and in his name, and in the name or names of his executors or administrators, but for the sole and proper use and benefit of the said (*assignee*), his executors, administrators and assigns, to demand, sue for, recover, and receive of and from the said (*obligor*), and all and every other the person and persons to whom it shall and may belong to pay the same, all and every the sum and sums of money now or at any time, and from time to time hereafter to grow or become due, or be payable upon or by virtue of the said bond; and on non-payment thereof, to use and take all such lawful and equitable ways and means for obtaining or recovering the same, as shall be deemed necessary or expedient in that behalf; and on payment thereof to deliver up or cancel the said bond, and to give sufficient releases and discharges for the monies due thereon (1), and one or more attorney or attornies under him the said (*assignee*), his executors, administrators or assigns, for any of the purposes aforesaid, to nominate, substitute or appoint, and from time to time to remove and displace as he or they shall think fit; HE the said (*assignor*) hereby transferring and giving unto the said (*assignee*), his executors, administrators and assigns, his full and whole power and authority in the premises to every intent and purpose, and ratifying and confirming, and promising and agreeing to ratify and confirm all and whatsoever he or they shall lawfully do, or cause to be done in or about the premises by virtue of these presents. AND the said (*assignor*) for himself, his heirs, executors and ad-

To hold to the assignee absolutely.

Power of attorney.

Covenant by assignor that bond is subsisting.

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(1) If the bond be accompanied by a judgment, say,

Judgment.

"And to acknowledge, or cause to be acknowledged, satisfaction upon the said judgment.

Assignment. Debt (bond).

ministrators, doth hereby covenant, promise, and agree with and to the said (*assignee*), his executors, administrators and assigns, in the manner following (that is to say), that for and notwithstanding any act, deed, matter or thing by him the said (*assignor*) made, done, committed, or suffered to the contrary, the said bond or obligation hereby assigned (1), or mentioned or intended so to be, is still subsisting and in force, and that the sum of £ mentioned in the condition thereof, and secured to be paid by the same as hereinbefore is mentioned, is still due and owing to him the said (*assignor*);

That he has power to assign.

And that for and notwithstanding any such act, deed, matter or thing as aforesaid, he the said (*assignor*) at the time of the sealing and delivery of these presents, hath in himself good right, and full and lawful power and authority to assign and transfer the said bond or obligation (2), sum of money, and premises unto the said (*assignee*), his executors, administrators and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents.

Will not receive the money,

nor prejudice the assignment.

And also that he the said (*assignor*), his executors or administrators, shall not nor will at any time hereafter, receive the said sum of £ , or the interest thereof; nor make, do, execute, or knowingly occasion or suffer any act, deed, matter, or thing whatsoever, whereby or by means, or in consequence whereof the said (*assignee*), his executors, administrators, or assigns, shall or may be prevented, hindered, or interrupted from receiving, recovering or enforcing payment of the same, or any part thereof.

Further assurance.

And also that he the said (*assignor*), his executors and administrators, shall and will at any time or times hereafter, at the request and expense of the said (*assignee*), his executors, administrators and assigns, do and execute all such further lawful and reasonable acts, deeds, matters and things, not only for the further, better, and more effectually or satisfactorily assigning the said bond or obligation, and other the premises aforesaid, unto the said (*assignee*), his executors and administrators, but also in or for assigning the same unto any other

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Judgment.

(1) If a judgment recovered on the bond be also assigned, say,

"The said bond or obligation, and judgment hereby assigned, or mentioned, or intended so to be, are still subsisting and in force, and that the same or either of them, or any execution or other remedy to be had or issued by virtue thereof, are not in any wise defeated or prevented."

Judgment.

(2) If a judgment be also assigned, say, "the said bond or obligation, and judgment," throughout the precedent.

ASSIGNMENTS.
Debt (bond).

person or persons whomsoever (1), and enabling the said (*assignee*), his executors, administrators and assigns, to recover and receive all and singular the said monies and premises to and for his and their own use and benefit (2) as he or they, or his or their counsel in the law, of the degree of a barrister shall advise or require. [*Add a covenant by the assignee to indemnify assignor* (3). IN WITNESS, &c.

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(1) In an assignment of a bond by the obligee, it is proper that he should covenant with the assignee to join in any subsequent assignment, lest it should be required by any future assignee as evidence of the money not having been paid to the obligee; Brace v. Harrington, 2 Atk. 235. Obligee should covenant to concur in future assignments.

(2) If the bond be accompanied by a judgment, add, Judgment.

"And for confirming all actions, suits, process, executions, and other lawful proceedings whatsoever, which shall or may be had, prosecuted, or sued out against the said (*debtor*), his heirs, executors, or administrators, or his, their, or any of their lands, tenements, goods or chattels, in the name of him the said (*assignor*), upon or by virtue thereof."

(3) The form of this covenant will be precisely similar to that given *ante*, p. 468.

*** *Ad valorem* duty on the consideration given for the assignment, see *post*. Vol. III. "STAMP." Stamp.

On an assignment of a bond, notice of the assignment should be given to the obligor, as otherwise payment by him to the obligee will be good. See Ashcomb's Ca. 1 Ch. Ca. 232; Baldwin v. Billingsley, 2 Vern. 539. Notice.

ASSIGNMENTS.

Debt (bond and war. attorney).

No. CXXXVI.

**An Assignment of a* Bond *and* Warrant of Attorney, *where the time for payment has not arrived.*

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN (*the assignor*) of, &c. of the one part, and (*the assignee*) of, &c. of the other part. WHEREAS by a certain bond or obligation in writing, bearing date on or about the day of , which was in the year , (*the obligor*) of, &c. became bound to the said (*assignor*) in the penal sum of £ conditioned to be void on payment to the said (*assignor*), his executors, administrators, or assigns, of the sum of £ together with interest for the same, after the rate of £ per annum on the day of then and now next ensuing.

Recital of bond.

AND WHEREAS the said (*obligor*), by a certain warrant of attorney bearing even date with the said bond or obligation, under his hand and seal, and directed to certain attornies of his Majesty's Court of King's Bench at Westminster, therein named, authorized and empowered such attornies, or one of them, to enter up a judgment in the said court, on the said bond for the penalty thereof, with costs of suit, which said judgment so to be entered up, was declared to be for better securing to the said (*assignor*) the payment of the said sum of £ according to the condition of the said bond, together with interest and costs of suit. AND WHEREAS the said judgment has not yet been entered up in pursuance of the said warrant, but the said (*assignee*) hath agreed to advance to the said (*assignor*) the said principal sum secured by the said bond and warrant of attorney, together with the interest due thereupon to the day of the date hereof, on having such assignment made to him, of the said bond and warrant of attorney, and the judgment to be entered up thereon as hereinafter is mentioned. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ire-

And warrant of attorney.

Judgment not yet entered up.

WITNESS. Assignment of bond, &c.

ASSIGNMENTS.

Debt (bond and war. attorney).

land to the said (*assignor*) in hand paid by the said (*assignee*) at or before the time of the sealing and delivery of these presents (being the amount of and in full for all principal money due on the said in part recited securities, and all interest thereupon to the day of the date hereof), the receipt whereof and that the same is so in full as aforesaid, the said (*assignor*) doth hereby acknowledge, and of and from the same doth acquit, release, and discharge the said (*assignee*), his executors, administrators, and assigns for ever, by these presents, HE the said (*assignor*) HATH assigned, transferred, and set over, and by these presents DOTH assign, transfer, and set over, unto the said (*assignee*), his executors, administrators, and assigns, ALL that the hereinbefore in part recited bond or obligation, and also the said warrant of attorney to enter up judgment thereupon, together with the said judgment when so entered up, AND all and every the principal and interest monies now due or to become due upon or by virtue thereof, AND all benefit and advantage whatsoever to be had, made, or obtained, by virtue or means of the said bond, warrant of attorney, and judgment, or any or either of them, or any process, extent, or other execution, to be thereupon had, sued out, or executed, AND all the right, title, interest, property, claim, and demand whatsoever, of him the said (*assignor*), of, in, or to the said bond, warrant of attorney, judgment, monies, and premises, and every of them: TO HAVE, HOLD, RECEIVE, AND ENJOY the said bond, warrant of attorney, judgment, and all and singular the monies and premises hereby assigned, or otherwise assured, or intended so to be, unto and by him the said (*assignee*), his executors, administrators, and assigns, from henceforth, and for his and their own use and benefit for ever. AND (1) for the better and more effectually enabling the said (*assignee*), his executors, administrators, and assigns, to recover and receive the said monies and premises, he the said (*assignor*) hath made, constituted, and appointed, and in his place and stead put, and by these presents doth make, constitute, and appoint, and in his place and stead put the said (*assignee*), his executors, administrators, and assigns, as and for the true and lawful attorney and attornies irrevocable, of him the said (*assignor*), and in his name, but to and for the sole use and benefit of the said (*assignee*), his executors, administrators, and assigns, to demand, and receive of and from the said (*obligor*), his heirs, executors, or

To hold to assignee absolutely.

Power of attorney to receive the money.

(1) See the propriety of inserting this power, *ante*, p. 467.

Power of attorney.

ASSIGNMENTS.
Debt (bond and war. attorney).

administrators, the said principal sum of £ and the interest thereof when and as the same shall respectively become due and payable under or by virtue of the said bond, warrant of attorney, and judgment, or either of them or otherwise, and all costs and charges attending the receipt and recovery thereof, and also to enter up the said judgment upon record, and to sue and prosecute any action, suit, execution, or extent thereupon if needful or lawful; and to acknowledge, and give full satisfaction, releases, and discharges, for all or any part of the said monies upon receipt thereof or otherwise as he or they shall be advised or think fit; and generally to do all and every other lawful acts and things, as well for the recovering and receiving, as for the releasing and discharging and otherwise acting in or concerning the said securities, monies, and premises, in as full, ample, and beneficial a manner, to all intents and purposes whatsoever as he the said (*assignor*), his executors, administrators, and assigns could or might do, if personally present, and did the same, he the said (*assignor*) hereby ratifying, allowing, and confirming and agreeing at all or any time or times hereafter to ratify, allow and confirm all and whatsoever the said (*assignee*), his executors, administrators, or assigns shall lawfully do, or cause to be done, in or about the premises by virtue of these presents. AND the said (*assignor*), for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said (*assignee*), his executors, administrators, and assigns, by these presents in manner following, (that is to say) that the said bond or obligation, and warrant of attorney are, and each of them is still in full force and effect, and the said sum of £ now due and payable thereupon. AND further, that he the said (*assignor*) hath not received or discharged all or any part of the monies due or to grow due on the said bond, warrant of attorney, or judgment. AND that he the said (*assignor*), his executors or administrators, shall not nor will at any time hereafter, receive the said monies, or any part thereof, nor release or discharge the said bond, warrant of attorney, or judgment; nor release, nonsuit, vacate, or disavow any suit or other legal proceeding to be had, made, or prosecuted by virtue of these presents, for the recovering, or releasing, or discharging the said monies, bond, warrant of attorney, or judgment respectively, without the licence of the said (*assignee*), his executors, administrators, or assigns, first had and obtained in writing for that purpose: [nor shall or will revoke, invalidate, hinder, or make void these presents, or any authority or power hereby given, without

Covenant that bond and warrant of attorney is in full force,

that assignor hath not received,

nor will receive the monies,

nor revoke these presents.

such licence as aforesaid (1)]. AND that he the said (*assignor*), his executors and administrators, shall and will, at the request and charges of the said (*assignee*), his executors, administrators, or assigns, at any time or times hereafter make, do, and execute and cause and procure to be made, done and executed any further or other lawful and reasonable act, or thing in the law or otherwise for the better enabling him or them to recover and receive all and singular the monies and premises hereby assigned or otherwise assured or intended so to be for his and their own use and benefit, as by him or them, or his or their counsel in the law shall be advised or required. AND, &c. [*covenant to indemnify assignor against costs, &c.* (2)].

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(1) Since powers of attorney for securing money have been held to be irrevocable, this covenant not to revoke is unnecessary, but is nevertheless usually inserted.

(2) See *ante*, p. 468.

*** *Ad valorem* on the consideration for the assignment; see *post.* Vol. III. "STAMP." Stamp.

ASSIGNMENTS.

Debt (bond).

No. CXXXVII.

**An Assignment of a* Bond Debt (1) *from an Executor to a Residuary or other Legatee.*

THIS INDENTURE, made the day of in the year of our Lord 18 . BETWEEN (the *assignor*) of, &c. executor of the last will and testament of (*testator*), late of, &c. deceased, of the one part, and (the *assignee*) of, &c. residuary (*or other*) legatee in the said will named, of the other part. WHEREAS, &c. [*recite the bond* (2)]. AND WHEREAS the said testator, by his last will and testament in writing bearing date on or about the day of , which was in the year of our Lord , gave and bequeathed the said bond or obligation, and all principal and interest money due or to become due thereupon unto the said (*assignee*) for his own use and benefit [*or as the case may be*]. AND WHEREAS the said testator departed this life on or about the day of without altering or revoking his said will, and the said (*executor*) soon after his decease duly proved the same in the Ecclesiastical Court of . AND WHEREAS the said in part recited bond or obligation is still subsisting and in force, for any thing that to the contrary thereof appears. AND WHEREAS the said (*assignee*) has requested the said (*executor*) to assign to him the said bond, in pursuance of the said in part recited will and the bequest therein contained, which the said (*executor*) has agreed to do on being so indemnified as hereinafter is mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said request and agreement, and of the gift or bequest in the said in part recited will of the said (*testator*) deceased, contained [and for and in consideration of the sum of 5*s.* of lawful money of Great Britain to the said (*assignor*) in hand well and truly paid by the said (*assignee*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] he the said (*assignor*) HATH

Recital of bond and will.

WITNESS. Executor assigns.

(1) See notes to No. CXXXV. *ante*, p. 470.
(2) See *ante*, p. 470.

ASSIGNMENTS.
Debt (*bond*).

assigned, transferred and set over, and by these presents DOTH, so far as he lawfully can or ought, assign, transfer and set over unto the said (*assignee*), his executors, administrators and assigns, ALL that the hereinbefore in part recited bond or obligation, and all principal and interest monies now due and hereafter to grow due thereupon, and all benefit and advantage of the same, TO HAVE, HOLD, RECEIVE, TAKE AND ENJOY the said bond or obligation, principal and interest money, and all and singular other the premises hereinbefore assigned, or otherwise assured or intended so to be, unto and by him the said (*assignee*), his executors, administrators and assigns for ever, as his and their own proper monies and effects. AND, &c. [*add power of attorney to receive, &c.*] (1). AND the said (*assignor*) for himself, his heirs, executors and administrators, doth covenant, promise and declare, to and with the said (*assignee*), his executors, administrators and assigns, by these presents, in manner following, (that is to say) THAT, &c. [*covenant that the executor has not released, &c.*] (2). AND THIS INDENTURE FURTHER WITNESSETH (3), that for and in consideration of the assignment and covenants hereinbefore contained, by and on the part of the said (*assignor*), he the said (*assignee*) HATH remised, released, and for ever quit claimed, and by these presents DOTH remise, release and for ever quit claim unto the said (*assignor*), his executors and administrators, all and all manner of action and actions, suits, prosecutions, accounts, reckonings, legacies, bequests, sum and sums of money, debts, dues, duties, claims and demands whatsoever, both at law and in equity or otherwise howsoever which he the said (*assignee*) now hath, ever had or can or may at any time hereafter have, claim or demand from or against him the said (*assignor*), his executors or administrators, as executor of the last will and testament of the said (*testator*) deceased, on account or in respect of the gift or bequest of the said in part recited bond or obligation, or monies due or to become due thereupon, [or *if the release is to be general* for or on account of any other gift, bequest, matter or thing whatsoever in the said will contained, to or for him the said (*assignee*) in any manner howsoever.] AND the said (*assignee*) for the consi-

Power of attorney.
Covenant by assignor that he has not released.
FURTHER WITNESS.
Assignee releases executor.

(1) See ante, p. 468.
(2) See *ibid.*
(3) The following covenants, &c. on the part of the assignee, being contained in the same instrument as those on the part of the assignor, render it necessary that the assignor, for his protection, should hold a counterpart of the deed of assignment, unless prevented by the release and indemnity being by separate instruments, for which see *post.* Vol. III. "RELEASE."

ASSIGNMENTS.

Debt (bond).

derations aforesaid, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said (*assignor*), his executors and administrators, by these presents, in the manner following, (that is to say) that he the said (*assignee*), his executors and administrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless and indemnified him the said (*assignor*), his executors and administrators, and also the estate and effects of the said (*testator*) deceased, of, from and against all and all manner of actions, suits, claims and demands whatsoever which shall or may be made or instituted by or on the part of any legatee or legatees of him the said (*testator*), or any person or persons claiming or to claim by, from, through, under or in trust for such legatee or legatees, under or by virtue of the said in part recited will, or any other will, codicil or testamentary disposition of the estate or effects of him the said (*testator*) deceased, or of any part thereof or as next of kin of him the said (*testator*) or otherwise howsoever, by reason or on account of the assignment hereinbefore contained, and also from and against all costs, charges, damages and expences for or through any action, suit, matter or thing to be had or done by him the said (*assignee*), his executors, administrators or assigns, by virtue of these presents in relation to the said bond or obligation, monies or premises hereby expressed to be assigned or otherwise assured. IN WITNESS, &c.

Covenant by assignee to indemnify assignor.

Stamp.

*** Common deed stamp; see *post.* Vol. III. "STAMP."

No. CXXXVIII.

An Assignment of a Debt *due upon* Judgment (1)

THIS INDENTURE made the day of in the year of our Lord 18 , BETWEEN (*the assignor*) of, &c. of the one part, and (*the assignee*) of, &c. of the other part. WHEREAS a judgment hath been obtained as of term last past, in his Majesty's Court of at Westminster, against (*the debtor*) of, &c. in an action of debt for money had and received, at the suit of the said (*assignor*) for the sum of £ and costs of suit, as by the record of the said judgment, reference being thereto had, will more fully and at large appear. AND WHEREAS the said (*assignor*) hath agreed to assign the said judgment unto the said (*assignee*) in consideration of the sum of £ , NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*assignor*) in hand well and truly paid by the said (*assignee*) at or immediately before the sealing and delivery of these presents, the receipt whereof the said (*assignor*) doth hereby acknowledge, and of and from the same doth hereby acquit, release, exonerate and for ever discharge the said (*assignee*), his executors, administrators and assigns, as well by these presents as by the receipt or acknowledgment for the same sum hereupon indorsed, HE the said (*assignor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over unto the said (*assignee*), his executors, administrators and assigns, ALL that the said hereinbefore in part recited judgment, and all and every sum and sums of money whatsoever, now or hereafter to become due upon or by virtue thereof, and to be had or arise from or by any execution to be issued or sued out thereupon, and all

Recital of judgment.

WITNESS. That in consideration of £

The assignor assigns.

The judgment.

(1) A debt, although recovered by verdict or by confession of the party, still remains a chose in action until reduced into possession by execution; Shep. Couns. Par. I. p. 352; Wood's Inst. 62. 64; and it is referrible therefore to the same observations as have been made in a preceding note; see *ante*, p. 465, n. (1).

Debt on judgment a chose in action.

ASSIGNMENTS.

Debt (Judgment).

benefit and advantage whatsoever to be had or derived from or under the same, and all the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him the said (*assignor*), in, to, or concerning the same, TO HAVE AND TO HOLD the said judgment and other the premises hereby assigned, or mentioned or intended so to be, unto the said (*assignee*), his executors, administrators and assigns, to and for his and their own use and benefit. AND for the better enabling the said (*assignee*), his executors, administrators and assigns, to enforce the payment of the said sum of £ due upon the said judgment, he the said (*assignor*) hath made, deputed, constituted and appointed, and by these presents doth make, depute, constitute and appoint the said (*assignee*), his executors, administrators and assigns, his true and lawful attorney and attornies (1) irrevocable, for him the said (*assignor*), and in his name, but for the sole and proper use and benefit of the said (*assignee*), his executors, administrators and assigns, to sue out and take, or cause to be taken, any execution or executions upon the said judgment, and upon payment of the said sum of £ and costs, to acknowledge satisfaction upon the record of the said judgment, and to make or give any other release or discharge for the same: and one or more attorney or attornies under him the said (*assignee*), his executors, administrators or assigns, to substitute or appoint, and from time to time to remove and displace at his pleasure, he the said (*assignor*), hereby transferring and giving unto the said (*assignee*), his executors, administrators and assigns, full and absolute power and authority in the premises, to every intent and purpose whatsoever, and ratifying and confirming, and promising and agreeing to ratify and confirm all and whatsoever he or they shall lawfully do or cause to be done in or about the premises by virtue of these presents. [*Add covenants by the assignor, that the debt and judgment respectively are still in force, and unsatisfied, that he hath right to assign, &c. &c.* (2)]. IN WITNESS, &c.

To hold to the assignee absolutely.

Power of attorney to sue out execution.

Covenants.

Necessity of power of attorney.

(1) A power of attorney for the reasons given in the preceding page, 467. n. (1) is equally necessary in the assignment of a judgment as of any other debt: and it may be further observed, that no one can in any case, unless expressly authorised, sue out execution who is not privy to the judgment, or entitled to the benefit of it as heir, executor or administrator; 1 Roll. Ab. 889.

(2) See *ante*, p. 468.

Stamp.

*** *Ad valorem* on the consideration paid for the assignment; see *post*. Vol. III. "STAMP."

No. CXXXIX.

An Assignment of Bad Debts, *on dissolution of a* Co-partnership *in pursuance of the articles of Co-partnership.*

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN (*one co-partner*) of, &c. of the one part, and (*other co-partner*) of, &c. of the other part. WHEREAS the said parties under or by virtue of certain articles of agreement bearing date on or about the day of , which was in the year , and made between the said, &c. became co-partners in the trade of a , in which said articles was contained a proviso or agreement, that at the expiration by effluxion of time, or other sooner determination of the said co-partnership, all and every the debts and sums then remaining due to the said parties should, &c. [*recite the agreement from the articles*] (1). AND whereas the said co-partnership expired by effluxion of time [*or as the case may be*] on the day of now last past. AND whereas there was then and still is owing to the said co-partnership, and unreceived, the several debts or sums mentioned in the two schedules hereunder written respectively distinguished by the letters A. and B. and all of which the said parties reckon to be desperate or doubtful, AND whereas in pursuance of the said in part recited articles, they have agreed to apportion the said debts between them in the manner following, (that is to say) that the said (*first party*) shall have for his own use the debts or sums mentioned in the first of the said schedules marked A.; and the said (*second party*) the debts or sums mentioned in the second of the said schedules marked B. NOW THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said agreements (2)

Recital of co-partnership.

Debts in schedule unreceived.

WITNESS. Parties assign to each other debts in schedules.

(1) See *ante*, MOD. PREC. Vol. VII. pp. 88. 119, 144, 224.

(2) If the debts cannot be so equally divided, and it is agreed that one shall pay to the other a sum by way of equality of partition, add, "AND in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland in hand well and

ASSIGNMENTS.
Debts (co-partnership).
Assignment from A to B.

He the said (*first party*)] HATH bargained, sold, assigned and quit claimed, and by these presents DOTH bargain, sell, assign and quit claim unto the said (*second party*), his executors, administrators and assigns, all, every and singular the debt and debts, sum and sums of money, dues and demands which are set forth or mentioned in the first schedule hereunder written, marked or distinguished by the letter A. And all the right, title, interest, claim, part, share and proportion whatsoever of him the said (*first party*) of, in or to the same, and every or any of them, under or by virtue of the said in part recited articles of co-partnership or otherwise howsoever. AND the said (*first party*) hath made, constituted and appointed, and doth hereby make, constitute and appoint the said (*second party*) his true lawful, and only attorney, &c. (1). AND the said (*first party*), for himself, his executors and administrators, doth hereby covenant and declare, to and with the said (*second party*), his executors, administrators or assigns, that he the said (*first party*) hath not at any time heretofore received, released, discharged, cancelled or annulled any or either of the debts, sums, dues or demands hereinbefore assigned or otherwise assured to the said (*second party*), or intended so to be, or any bill of exchange, note, promise or other security for, or relative to the same, or any or either of them, or any part thereof. And further, that he the said (*first party*), his executors or administrators shall not, nor will at any time hereafter receive, release, discharge, cancel or annul the said debts or sums, bills, notes, premises, securities, dues or demands, or any or either of them, or any part thereof, nor release, impede or prejudice any action, suit or process to be instituted by him the said (*second party*) for recovering, receiving, or relating to the same, or any or either of them, without the approbation or consent in writing of him the said (*second party*), his executors, administrators or assigns, for that purpose. AND moreover that he the said (*first party*), his executors and administrators, shall and will at all or any time or times hereafter, at the request and expense of the said (*second party*), his executors, administrators or assigns, do or cause to be done, any such further or other act or thing for the better and more perfectly or satisfactorily

Letter of attorney to receive.

Covenant by assignor that he hath not received, &c.

Nor will receive, &c.

Further assurance.

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truly paid by the said (*second party*) to the said (*first party*), the receipt whereof he the said (*first party*) doth hereby acknowledge, and of and from the same doth hereby absolutely acquit and discharge the said (*second party*), his executors and administrators.

(1) See and proceed as *ante*, p. 467.

ASSIGNMENTS.
Debts (co-partnership).

assigning, confirming or assuring the debts, sums and premises expressed or intended to be hereby assigned, or any or either of them, or any part of the same, unto the said (*second party*), his executors, administrators or assigns, or for enabling him or them to receive the same to or for his and their own use and benefit as he or they, or his or their counsel in the law, being of the degree of a barrister, shall reasonably require or advise. AND, &c. [*add covenant by assignee to indemnify assignor against costs of actions, &c.* (1)]. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance also of the said hereinbefore mentioned agreement, HE the said (*second party*) HATH, &c. [*add assignment of the debts mentioned in the second schedule from the second party to the first party in like manner as the preceding assignment of those in the first schedule from him to the second party, with like covenants*]. IN WITNESS, &c.

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(1) See *ante*. p. 468.

*** Common deed stamp; see *post*. Vol. III. "STAMP." Stamp.

ASSIGNMENTS.
Dividends (bankruptcy)

No. CXL.

**An Assignment of* Dividends *under a Commission of Bankruptcy.*

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN (*the assignor*) of, &c. of the one part, and (*the assignee*) of, &c. of the other part. WHEREAS, &c. [*recite commission of bankrupt, and proceedings thereupon* (1)]. And whereas the said (*assignor*) hath proved the sum of £ under the said commission, as due to him from the said (*bankrupt*). AND whereas the said (*assignee*) hath agreed with him for the purchase and assignment of the dividends thereupon for the sum of £ . NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland to the said (*assignor*) in hand well and truly paid by the said (*assignee*) at or before the sealing and delivering these presents (the receipt whereof the said (*assignor*) doth hereby acknowledge, and of and from the same doth acquit, release and for ever discharge the said (*assignee*), his executors, administrators and assigns), He the said (*assignor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over unto the said (*assignee*), his executors, administrators and assigns, ALL that the said debt or sum of £ so due to him the said (*assignor*) from the said (*bankrupt*), and proved under the said in part recited commission as hereinbefore is mentioned, and all and every the security and securities for the same, and all and every the sum and sums of money which shall or may be paid or payable by way of dividend upon or in respect of the same, under or by virtue of the said commission, or otherwise howsoever, and all powers, remedies and lawful means for the recovery thereof, and all

Recital of commission, &c.

WITNESS. Assignee assigns debt and dividends.

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(1) See *ante*, MOD. PREC. Vol. VI. No. VIII. p. 574.

ASSIGNMENTS.
Dividends (bankruptcy).

the right, title, interest, property, claim and demand whatsoever both at law and in equity, of him the said (*assignor*), of, in and to the same and every, or any part thereof, TO HAVE AND TO HOLD, receive, perceive, take and enjoy all and every the said sum and sums of money, dividends, and premises hereinbefore assigned, or otherwise assured, or intended so to be, with the appurtenants and incidents thereto belonging unto and by him the said (*assignee*), his executors, administrators and assigns, to and for his and their own use and benefit, and as his and their own proper monies and effects for ever. AND the better to enable the said (*assignee*) to recover and receive, &c. [*power of attorney for assignee to demand, &c. the dividends* (1)]. AND the said (*assignor*), for himself, &c. [*covenant by assignor that he has not received, &c. and for further assurance* (2)]. AND, &c. [*covenant of indemnity to the assignor* (3)]. IN WITNESS, &c.

To hold to assignee absolutely.

Power of attorney.

Covenant.

(1) See *ante*, p. 454, 467.
(2) See *ante*, p. 468.
(3) See *ante*, p. 468.

*** *Ad valorem* on the consideration paid for the assignment; see *post*. Vol. III. "STAMP."

Stamp.

ASSIGNMENTS.
Dower (by heir).

No. CXLI.

An Assignment of Dower (1), *by the Heir.*

THIS INDENTURE of two parts, made the day of , in the year of the reign, &c. in the year of our Lord 18 ,
Parties. BETWEEN (*the heir*) (2) of, &c. son and heir of ,

Dowress cannot take her dower until assignment.

(1) Although a woman is legally entitled to dower upon the decease of her husband, i. e. of the third part of the lands and tenements of which he was solely seised, in fee simple or fee tail, in possession at any time during the coverture, yet she cannot enter upon her part until it has been regularly assigned to her, either by the sheriff, under the King's writ, or by the heir or other tenant of the land; Co. Lit. 34. b. This assignment, however, may be by parol, as neither livery of seisin nor writing is necessary to any assignment of dower, because it is due of common right, and is considered not as a new estate, but as a continuation of the estate of her husband; Co. Lit. 35. a.

Assignment of dower must be by the heir, or person entitled to the freehold.

(2) The person by whom the particular lands to be holden in dower are to be assigned, must be the heir of the husband (either by himself or his guardian), or other tenant of the freehold, Co. Lit. 34. b. for none can assign dower but those who have a freehold, or against whom a writ of dower will lie; a guardian in socage therefore, tenant by statute merchant, statute staple, or elegit, or lessee for years, cannot assign dower, they not having an estate sufficiently large to answer the plaintiff's demand; Perk. 403, 404; Co. Lit. 35. a.; 1 Roll. Ab. 681; Brodiman's Ca. 6 Co. 57. F. N. B. 148.; but a guardian in chivalry may, Co. Lit. 35. a. he having the freehold of the minor's lands.

Assignment of dower by heir good, though under age.

An assignment by the heir will be good although he be under the age of 21 years: but should he assign excessive dower, he may, upon attaining that age, have relief by a writ of admeasurement of dower; so if the assignment be made by the sheriff in execution of a judgment, he may have a *scire facias* to obtain an assignment *de novo*; but if he be of full age at the time, he will be bound. See Hoby v. Hoby, 1 Vern. 219; Stoughton v. Leigh, 1 Taunt. 402. And if the husband has been solely seised during the coverture, and afterwards convey or devise the land to two persons jointly, and die, either of the joint tenants may assign a third part of the lands so conveyed or devised to them, to the wife, as her dower, and his co-tenant will be bound by such assignment. Co Lit. 34. b. 35. a.

One of co-heirs, &c. may assign dower.

ASSIGNMENTS.
Dower (by heir).

deceased, of the one part, and (*the doweress*) of, &c. widow and relict of the said , deceased, of the other part. WHEREAS the said , at the time of his decease, was seised to him and his heirs of an estate of inheritance, in possession, and in severalty of and in certain messuages, lands, tenements and hereditaments, situated at , in the county of , which upon his decease descended unto the said (*heir*), as his heir at law. AND WHEREAS the said (*doweress*) hath requested the said (*heir*) to assign to her one third part of the lands and hereditaments as aforesaid, for her dower, which he hath agreed to do. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, he the said (*heir*) HATH assigned, and by these presents DOTH assign unto the said (*doweress*) one third part of and in the said messuages, lands, tenements and hereditaments, by the metes and bounds (1) following, (that is to say,) ALL, &c. (2) being one full and equal third part, by metes and bounds, of all and singular the messuages, lands, tenements and hereditaments, of which the said died seised, and of which she the said (*doweress*) is entitled to dower, TO HAVE AND TO HOLD the said lands, tenements and hereditaments heretofore assigned or mentioned or intended so to be, with their and every of their rights, members and appurtenances, unto the said (*doweress*) and her

Recital of seisin of husband.

WITNESS.
The heir assigns

Parcels.

To hold to the doweress for her life.

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(1) Dower must be regularly assigned by metes and bounds, and not of a third part in common, 1 Roll. Ab. 683. unless where the inheritance is so entire that no division of it can be made, as in the case of a mill, where the widow shall be endowed of the third toll dish, or *de integro molendino per quemlibet tertium mensem*; so also she shall be endowed of the third presentation to an advowson, of the third part of the profits of a stallage, or fair, of the third part of a piscary, of the third part of the profits of court fines, heriots, &c. this being the only manner in which dower of these things can be taken; Co. Lit. 32. a. And if the property consist of mines, dower may be assigned of them either collectively with other lands, or separately of themselves; but it must be assigned by metes and bounds, if practicable, and if not, then either by a proportion of the rents and profits, or by a separate alternate enjoyment of the whole for short proportionate periods; Stoughton v. Leigh, 1 Taunt. 402.

Dower must be assigned by metes and bounds, where practicable.

(2) Care must be taken that the lands assigned for dower be such as the wife was dowable out of, or of a rent or some other profit issuing out of the same, as an assignment of other lands, whereof she is not dowable, will be no bar to her demand of dower; Co. Lit. 34. b. unless she be a party to the deed, and consent to take such lands in satisfaction; Perk. 110; Turney v. Sturges, Dyer 91. pl. 12.

Dower must be assigned out of the lands dowable.

ASSIGNMENTS.
Dower (by heir).
Acceptance of dower.

assigns to and for her own absolute use and benefit (1), for and during the term of her natural life, as and for and in full of her dower, out of the lands and hereditaments of which the said died seised as aforesaid. AND she the said (*doweress*) doth hereby accept and take the said lands, tenements and hereditaments for full satisfaction of all such dower accordingly, and doth acquit, release and for ever discharge him the said (*heir*) of and from the same, and of and from all claims and demands whatsoever, for or in respect thereof. IN WITNESS, &c.

Assignment of dower must be absolute,

(1) The assignment of dower must be absolute, neither subject to be defeated by any condition, nor lessened by any exception or reservation; 1 Roll. Ab. 682. X. pl. 8. Co. Lit. 34. b. Wentworth v. Wentworth, Cro. Eliz. 451.

Stamp.

*** Common deed stamp; see *post*. Vol. III. "STAMP."

No. CXLII.

An Assignment of a Deed *of* Indemnity (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the assignor*) of, &c. sendeth greeting. WHEREAS by an indenture bearing date the day of , and made or expressed to be made between (*the covenantor*) therein described of the one part, and the said (*assignor*) of the other part, the said (*covenantor*) covenanted, promised and agreed with and to the said (*assignor*), his executors, administrators and assigns, that he the said (*covenantor*), his heirs, executors or administrators, should and would from time to time, and at all times thereafter, well and truly pay, satisfy and discharge the whole and every part of a certain yearly rent charge, or annual sum of £ , charged or chargeable upon, and issuing and payable out or in respect of certain messuages, tenements and premises, situated at , in the county of , then purchased by the said (*assignor*), of him the said (*covenantor*), as in the said indenture is mentioned; and that he the said (*covenantor*), his heirs, executors or administrators should and would save, defend, keep harmless and indemnified the said (*assignor*), his executors, administrators and assigns, and his and their goods and chattels, messuages, or tenements and premises, of, from and against the same; and that in case he or they neglected so to do, the said (*assignor*), his executors, administrators and assigns, should and might enter into and distrain upon the lands and tenements of him the said (*covenantor*), in the said indenture more particularly described, to satisfy the same, and all costs and charges to be incurred in respect thereof (2). AND WHEREAS the said (*assignor*) hath lately sold

Recital of deed of indemnity.

(1) If it be a *Bond* of Indemnity; see, *ante*, No. CXXXV. p. 471, 472. *margin* *.

(2) If the deed have been previously assigned, say, "AND WHEREAS by divers mesne assignments and other acts in the law, and particularly by a certain indenture bearing date the

Deed previously assigned.

ASSIGNMENTS.

Indemnity (deed).

unto (*the assignee*) of, &c. the messuages, or tenements and premises, chargeable with the payment of the said yearly rent charge or annual sum of £ , and by an indenture of even date herewith, and made or expressed to be made between the said (*assignor*) of the one part, and the said (*assignee*) of the other part, the said messuages, or tenements and premises, have been conveyed and assigned, or otherwise assured unto the said (*assignee*), his executors, administrators and assigns, for the residue and remainder of the term of years then to come therein. AND WHEREAS upon the treaty for the said sale, it was agreed that the benefit of the above in part recited indenture of the day of , should be assigned to the said (*assignee*). NOW KNOW YE, that in pursuance of the said agreement, and in consideration of 5*s.* of lawful money of Great Britain, in hand well and truly paid by the said (*assignee*) to the said (*assignor*), at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HE the said (*assignor*) HATH assigned, transferred and set over, and by these presents DOTH assign, transfer and set over unto the said (*assignee*), his executors, administrators and assigns, ALL that the hereinbefore in part recited indenture mentioned to bear date the day of , and all the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him the said (*assignor*), of, in and to the same, and all benefit and advantage whatsoever, which can or may be had or derived from the same, or from all or any of the covenants, provisoes, clauses and agreements therein contained, or otherwise howsoever by reason or means thereof. TO HAVE AND TO HOLD the said in part recited indenture, and other the premises hereby assigned, or mentioned or intended so to be as aforesaid, unto the said (*assignee*), his executors, administrators and assigns, to and for his and their own use, behoof and benefit absolutely and for ever. AND the said (*assignor*), for himself, his heirs, executors, administrators and assigns, doth covenant, declare, promise and agree with and to the said (*assignee*), his executors, administrators and assigns, by these presents, that for and notwithstanding any act, deed, matter or thing whatsoever, by him the said (*assignor*), at any time heretofore made, done, committed or know-

WITNESS. That in consideration, &c.

The assignor assigns the deed of indemnity.

To hold to the assignee.

Covenant by assignor that the deed is in full force.

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day of , and made or expressed to be made between of the one part, and the said (*assignor*) of the other part, the said in part recited indenture was assigned to, or otherwise became vested in the said (*assignor*)."

ASSIGNMENTS.

Indemnity (deed).

ingly suffered, the said indenture hereby assigned or mentioned, or intended so to be, now is, and stands in full force and virtue in all respects: AND that he the said (*assignor*), his heirs, executors or administrators shall not, nor will at any time hereafter, without the consent in writing of him the said (*assignee*), his executors, administrators and assigns, do, or cause to be done, any act, matter or thing whatsoever, whereby the said indenture, or any thing therein contained may or can be released, discharged or otherwise prejudicially affected, or whereby the said (*assignee*), his administrators or assigns, may be prevented or impeded in receiving all benefit and advantage thereof. AND further, that he the said (*assignor*), his heirs, executors and administrators, shall and will from time to time, and at all times hereafter, at the request, costs and charges of the said (*assignee*), his executors, administrators or assigns, make, do, execute and perfect all and every such further and other acts, deeds and assurances in the law whatsoever, for the further and better, or more satisfactorily assigning the said indenture and premises unto him the said (*assignee*), his executors, administrators or assigns, or otherwise enabling him and them to use and avail himself and themselves of the same, and the several powers and remedies thereby given, in such manner as he or they, or his or their counsel shall reasonably advise and require. IN WITNESS, &c.

That he will not release.

Further assurance.

*** Common deed stamp; see *post.* Vol. III. "STAMP." Stamp.

ASSIGNMENTS.

Judgment (satisfied).

No. CXLIII.

An Assignment of a Satisfied Judgment *to protect the Inheritance* (1).

Parties.

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN (*the assignor of the judgment*) of, &c. of the first part, (*the vendor*) of, &c. of the second part, (*the purchaser*) of, &c. of the third part, and (*the trustee*) of, &c. of the fourth part.

Recital of judgment, and satisfaction thereof.

WHEREAS a judgment was obtained as of term, in the year of the reign, &c. in his Majesty's Court of , against (*the debtor*) of, &c. in an action of debt upon bond at the suit of the said (*assignor*), for the sum of £ and costs of suit, and which said judgment was duly entered up on record in the said court, as by reference thereto will more fully and at large appear. AND WHEREAS the said sum of £ hath since been fully paid and satisfied.

Contract for purchase of freehold estate.

AND WHEREAS the said (*vendor*) hath lately contracted with the said (*purchaser*) for the absolute sale to him of certain lands and hereditaments situated at in the county of , at the sum of £ , and by indentures of lease and release, the lease bearing date the day before the date of the release, and the release bearing, or intended to bear, even date with these presents, and made or expressed to be made between the said (*vendor*) of the one part, and the said (*purchaser*) of the other part, all and singular the said lands and here-

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Use of assignment of satisfied judgment.

(1) The principle upon which satisfied judgments or recognizances are assigned as a protection, is, that (from the time of their being docketed, if judgments, or enrolled, if recognizances), they attach upon the land, and give a legal right to the cognizee in like manner as satisfied terms; and therefore, when placed in the hands of a *bonâ fide* purchaser without notice, give him a priority to mesne incumbrances. See *ante*, MOD. PREC. Vol. 1. p. 430. 434. and *see post*. No. CLII. p. 540. n. (1.) See Pemberton v. Bartram, cited 4 Co. 60. But its use can only be in relation to freehold estates, as copyholds are not affected by judgments; Heydon's Ca. 3 Co. 9; 1 Roll. Ab. 888; Gilb. Ten. 185; Rowden v. Malster, Cro. Car. 44; and leaseholds not until execution have been sued out and delivered to the sheriff.

ASSIGNMENTS.

Judgment (satisfied).

ditaments were conveyed and assured unto and to the use of the said (*purchaser*), his heirs and assigns for ever. AND WHEREAS upon the treaty for the said purchase, it was agreed that the said judgment should be assigned to the said (*trustee*), in trust to attend the inheritance of the said premises for the said (*purchaser*), and for other the purposes hereinafter mentioned, NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of 5*s.* of lawful English money to the said (*assignor*), in hand well and truly paid by the said (*trustee*), at or before the execution of these presents, the receipt whereof is hereby acknowledged, he the said (*assignor*), at the request and by the direction and appointment of the (*vendor*), and at the nomination of the said (*purchaser*), testified by their severally being parties to, and signing and sealing these presents, HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over, and the said (*vendor*), for the considerations in the said indenture of release mentioned, and at and by the request and nomination of the said (*purchaser*), testified as hereinbefore is mentioned, HATH bargained, sold, assigned, ratified and confirmed, and by these presents DOTH bargain, sell, assign, ratify and confirm unto the said (*trustee*), his executors, administrators and assigns, ALL that the said hereinbefore in part recited judgment, and all and every sum and sums of money whatsoever now due thereon, or which hereafter shall or may grow or become due by virtue of the same, or upon any execution to be had, sued out, or issued thereupon, and all benefit and advantage whatsoever to be received or derived therefrom, and all the estate, right, title, property, interest, claim and demand whatsoever, both at law and in equity, of him the said (*assignor*), in, to or concerning the same, TO HAVE AND TO HOLD the said in part recited judgment, and other the premises hereby assigned or mentioned, or intended so to be, unto the said (*trustee*), his executors, administrators and assigns, in trust nevertheless for the said (*purchaser*), his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint, and in the mean time, and subject to such assignment, disposition, direction or appointment, IN TRUST, and to the intent that the same shall and may attend and wait upon the inheritance of the lands and hereditaments in or by the said in part recited indenture of release, of even date herewith, granted and released, or otherwise assured or mentioned, or intended so to be as aforesaid, in order to protect the same from and against all subsequent and mesne encumbrances, if any such there be. AND the

Agreement that judgment should be assigned to attend.

WITNESS. The assignor in consideration, &c. assigns,

and the vendor confirms.

The judgment.

To hold to the trustee in trust to attend the inheritance.

ASSIGNMENTS.

Judgment (satisfied).

said (*assignor*) doth by these presents authorise and empower the said (*trustee*), his heirs, executors, administrators and assigns, in the name or names of him the said (*assignor*), his heirs, executors or administrators, to sue out execution or other process or proceedings which may be deemed requisite or expedient for all or any of the purposes aforesaid (1). AND the said (*assignor*) doth hereby, for himself, his heirs, executors and administrators, covenant, declare and agree with and to the said (*purchaser*), his heirs and assigns, and with and to the said (*trustee*), his executors, administrators and assigns, in manner following, (that is to say) that he the said (*assignor*) hath not at any time heretofore made, done, committed, or knowingly suffered or omitted, nor been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said judgment hereby assigned or mentioned, or intended so to be, as can, shall or may be discharged, vacated, defeated or prejudicially affected in any manner howsoever. PROVIDED ALWAYS, &c. [*Here may be added provisoes for trustee retaining and being indemnified against expenses, and not being liable for casualties* (2).] IN WITNESS, &c.

Authority for trustee to sue out execution.

Covenant by assignor that judgment is not vacated.

Authority to give discharges unnecessary.

(1) As a judgment is supposed to be satisfied upon or before its assignment to protect the inheritance, the usual letter of attorney, inserted in the assignment of a judgment debt, authorising the assignee to receive and give discharges for the money, is of course unnecessary.

(2) See *ante*, MOD. PREC. Vol. VI. p. 530.

Stamp.

*** Common deed stamp; see *post*. Vol. III. "STAMP".

No. CXLIV.

An Assignment to the Purchaser of the largest Lot of several Leasehold Messuages, *&c. holden under one Lease, In Trust* (1) *to grant under leases to smaller Purchasers.*

Variations where the vendor is an Assignee only of the premises. Also where the assignment is by virtue of a licence to assign.

THIS INDENTURE made the day of [*in the year of the reign, &c. and] in the year of our Lord 18 . BETWEEN (*the vendor*) of, &c. of the one part, and (*the purchaser*) of, &c. of the other part. WHEREAS by an indenture of demise or lease, bearing date the day of , which was in the year , and made, or expressed to be made between (*the lessor*) therein described of the one part, and the said (*vendor*) of the other part, certain messuages, or tenements and premises therein and hereinafter particularly described, were demised unto the said

Recital of lease.

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(1) As each purchaser of premises sold in lots is liable to the whole of the rents and covenants contained in the lease, it is sometimes stipulated, in order to facilitate the sale of the premises, that the purchaser of the largest lot should take an assignment of the original lease, and grant under leases to the other purchasers at apportioned rents; by which means the title of the smaller purchasers is rendered less liable to objection.

Reason of the above trust.

* Where brevity is particularly required, such parts of the precedent as are placed within brackets may be omitted.

Brevity.

ASSIGNMENTS.
Leaseholds (largest lot).

(*vendor*), his executors, administrators and assigns, for the term of years, to be computed from the day of , at the yearly rent of £ , and under and subject to the several covenants and agreements therein contained on the tenant or lessee's part to be performed or observed (1). AND WHEREAS the said messuages or tenements and premises, were put up to public sale by auction, at on the day of last past, in lots.

Of sale by auction.

Of conditions of sale.

AND WHEREAS by the particulars and conditions of sale there exhibited, it was declared that the purchaser of lot , in such particulars mentioned, as comprising the greater part of the premises demised by the said lease, should take an assignment of the original lease, under which the same together with the several other lots, were holden, he entering into the usual covenants to produce the same when required by the purchasers of the other lots, and executing under-leases to them of their respective lots, at the yearly rent of a pepper-corn, for the residue of the term of years by the said indenture of original lease demised, wanting days at

Of payment of deposit.

AND WHEREAS the said (*purchaser*) became and was declared to be the highest bidder for, and purchaser of, lot in the said particulars of sale, at the sum of £ , and thereupon

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Vendor an assignee.

(1) If the vendor be an assignee of the premises, say,

"AND WHEREAS, by an indenture of assignment, bearing date the day of , which was in the year , and made or expressed to be made between the said (*lessee*) of the one part, and the said (*vendor*) of the other part, all and singular the said messuages, or tenements and premises, were assigned unto the said (*vendor*) for the residue of the said term, subject to the rent, covenants and agreements on the tenant's part, to be paid, observed and performed for or in respect of the said premises."

Licence to assign.

If it be necessary that the license of the lessor should be obtained previously to the assignment of the premises, say,

"AND WHEREAS the said (*assignor*) hath obtained a full license and authority in writing under the hand of the said (*lessor*), bearing date the day of last past, enabling him to assign the said messuages, or tenements and premises, in the manner hereinafter expressed, a copy of which said license is, or is intended to be indorsed on these presents."

ASSIGNMENTS.

Leaseholds (largest lot).

paid into the hands of the auctioneer at such sale the sum of £ (*deposit money*) by way of deposit, and in part of the said purchase money, conformably to the said conditions of sale. AND WHEREAS the said (*purchaser*), being the purchaser of the said lot, No. is become subject to the performance of the said in part recited conditions of sale in respect thereof. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of £ (1) (*deposit money*) so paid by the said (*purchaser*) at the time of the said sale, by way of deposit, and in part of the said purchase money as aforesaid, and of the further sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, being the residue and in full of the said purchase money, to the said (*vendor*), in hand well and fully paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the payment of which said sum of £ by way of deposit as aforesaid, and the receipt of which said sum of £ , being the residue of the said purchase money, making together the sum of £ , and being in full for the absolute purchase of the messuage or tenement, and premises firstly hereinafter described, being lot No. in the said particulars of sale mentioned, the said (*vendor*) doth hereby acknowledge [and of and from the same doth acquit, release, exonerate and for ever discharge the said (*purchaser*), his executors, administrators and assigns, and also the said messuage or tenement and premises by these presents and by the receipt (2) or acknowledgment for the same sum hereupon indorsed], HE the said (*vendor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH (3) bargain, sell, assign, transfer and set over unto the said (*purchaser*), his executors, administrators and assigns, ALL,

WITNESS. That in consideration of the purchase money,

the vendor assigns the premises comprised in the largest lot.

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(1) It is required by the stamp acts that the full purchase money should be set out in words at length. Consideration money.

(2) It is requisite that a receipt for the consideration money should be indorsed, as the acknowledgment in the body of the deed will not be conclusive evidence of its having been paid. Receipt should be indorsed.

(3) If the assignment be by the license of the lessor, add, Licence of lessor.

"By and with the consent and approbation of the said (*lessor*), testified by his license or authority for that purpose hereupon indorsed."

ASSIGNMENTS.
Leaseholds (largest lot).

&c. (1), being the messuage, or tenement and premises comprised in lot in the said printed particulars of sale, together with all and every the rights, members, easements, advantages, appendages and appurtenances to the same premises belonging, or therewith, or with any part thereof now or usually occupied or enjoyed; and all the estate, right, title, interest, term or number of years now to come and unexpired, property, claim and demand whatsoever, both at law and in equity, of him the said (*vendor*), of, in, to or out of the same premises, and every part and parcel thereof under or by virtue of the said indenture of lease, or otherwise howsoever. TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereinbefore assigned or mentioned, or intended so to be, with their and every of their rights, members, easements, advantages, appendages and appurtenances unto the said (*purchaser*), his executors, administrators and assigns, from henceforth, for and during all the residue or remainder of the said term or period of years in and by the said indenture of lease granted, which is or may be yet to come and unexpired by efflux and computation of time, SUBJECT NEVERTHELESS to the payment of the yearly rent or sum of £ in or by the said indenture of lease reserved, or such part thereof as will become due for or in respect of the premises therein comprised, from and after the day of last past, and to the performance and observance of the several covenants, provisoes and agreements therein contained, which on his or their part or behalf are or ought to be performed or observed from and after the date of these presents. AND (2), THIS INDENTURE FURTHER WITNESSETH, that in pursuance and execution on the part of the said (*vendor*) of the hereinbefore in part recited particulars and conditions of sale relative to the several messuages or tenements, and premises comprised in the several lots numbered respectively , and to the end and intent that the said (*purchaser*) may be enabled to execute such derivative or under-leases of the same to the several purchasers thereof, as by the said conditions of sale are

To hold to the purchaser for the residue of the term absolutely.

Subject to the rent and covenants in the lease.

FURTHER WITNESS.
That for the considerations aforesaid,

Parcels.

(1) Insert here a particular description of the premises comprised in the largest lot; or (for brevity sake) all the premises sold may be assigned here to the purchaser, TO HOLD those comprised in the largest lot to his own use, and the residue of the premises in trust, to grant leases to the smaller purchasers; as *post.* p. 504. by which mode the second or FURTHER witnessing part of the deed inserted in the text may be avoided.

(2) See *supra.* n. (1.)

ASSIGNMENTS.

Leaseholds (largest lot).

required [and also for and in consideration (1) of the sum of 5*s.* of like lawful current money to the said (*vendor*) at the time aforesaid, paid by the said (*purchaser*), the receipt whereof is also hereby acknowledged], HE the said (*vendor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over unto the said (*purchaser*), his executors, administrators and assigns, ALL, &c. (2) being the several messuages, or tenements and premises comprised in the several lots numbered respectively , in the particulars of sale hereinbefore referred to, with all and every the rights, members, easements, privileges, advantages and appurtenances to the same premises belonging, or in anywise appertaining, or therewith, or with any part thereof now or usually occupied or enjoyed, together with the said hereinbefore in part recited indenture of lease (3), and all benefit and advantage of the same, and of all and every the covenants, clauses, provisoes and agreements therein contained on the part of the lessor or landlord of the said premises to be performed or observed; and all the estate, right, title, interest, term or number of years now to come and unexpired, property, claim and demand whatsoever, both at law and in equity, of him the said (*vendor*), of, in or to the same premises, and every part or parcel thereof, under or by virtue of the said indenture of lease, or otherwise howsoever. TO HAVE AND TO HOLD the said several messuages or tenements,

the vendor assigns

the premises comprised in the smaller lots.

To hold to the puchaser for the

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(1) No pecuniary consideration is necessary for the validity of any deed, except it be a bargain and sale, where it is required by statute; see 27 Hen. 8. c. 16; Nice v. Everard, 6 T. R. 547. The idea that gave occasion to its insertion arose from the decision of our courts of law, that every voluntary conveyance, *i. e.* a conveyance without a valuable consideration, is, *primâ facie*, void as against creditors, Fitzer v. Fitzer, 2 Atk. 513; Jones v. Marsh, Ca. Tem. Talb. 64; Douglas v. Ward, 1 Ch. Ca. 100; Garth v. Mois, 1 Keb. 486; Sagittary v. Hide, 2 Vern. 44; but as a consideration of 5*s.*, although sufficient to raise an use under the above statute, is no valuable consideration in the purchase of lands to defeat the rights of creditors, Moore v. Mayhew, 1 Ch. Ca. 34; and as a vendor will be equally bounden, whether he convey for a valuable consideration or not, these words are unnecessary, and may therefore in all cases, except the bargain and sale above alluded to, be omitted.

Consideration of 5*s.* unnecessary except in bargain and sale.

(2) Insert here an accurate description of the several messuages and premises comprised in the smaller lots.

Parcels.

(3) If the vendor be an assignee only of the premises, say,

"Together with the hereinbefore in part recited indentures of lease and assignment, and all mesne assignments (if any) thereof, and all benefit and advantage of the same respectively."

Vendor an assignee.

ASSIGNMENTS.
Leaseholds (largest lot).
residue of the term.

and all and singular other the premises lastly hereinbefore assigned, or mentioned or intended so to be, and every part and parcel of the same, with their and every of their respective rights, members, privileges, easements, advantages and appurtenances unto the said (*purchaser*), his executors, administrators and assigns, from henceforth, for and during all the rest, residue and remainder of the said term or period of years, in and by the said hereinbefore in part recited indenture of lease granted, which is or may be yet to come and unexpired by efflux and computation of time, SUBJECT NEVERTHELESS to the payment of the rent and performance of the covenants, in or by the hereinbefore in part recited indenture of lease reserved, or contained on the tenant or lessee's part or behalf, to be paid, performed or observed from and after the date of these presents; BUT NEVERTHELESS UPON THE TRUSTS, and to and for the ends, intents and purposes hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST that he the said (*purchaser*), his executors, administrators and assigns, do and shall, as and when he or they shall be thereunto required by the said (*assignor*), his executors or administrators, or by any person or persons lawfully authorised, or otherwise competent in that behalf, make and execute at the costs and charges, in all things, of the person or persons requiring the same, a good and effectual demise or lease of the several messuages, or tenements and premises comprised in the said lots, numbered respectively, unto the several purchasers of the same respectively, and their respective executors, administrators and assigns, with their and every of their rights, members and appurtenances, for and during the full end or term of years, wanting one day, to commence and be computed from the day of now last past, at the yearly rent (1) of one pepper-corn, if demanded, and at, under and subject to the same, or the like covenants, provisoes, declarations and agreements on the part and behalf of the several lessees to be therein respectively named, and their respective administrators and assigns, to be performed and observed as are contained in the hereinbefore in part recited indenture of lease of the day of , to be performed and observed on the part and behalf of the lessee therein

Subject to the rent and covenants in the lease.

UPON TRUST, to grant under leases to smaller purchasers.

Apportioned rents.

(1) If the leases are to be granted at stipulated apportioned rents, say, "At the several yearly rents following (that is to say), for the messuages and premises comprised in lot No. the yearly rent of £ ," &c. &c.

ASSIGNMENTS.
Leaseholds (largest lot).

named, his executors, administrators and assigns, save only and except so far as concerns the yearly rent of £ thereby reserved. AND UPON FURTHER TRUST, and it is hereby declared and agreed by and between the said parties hereto, that until such demises or leases respectively shall be made and perfected, he the said (*purchaser*), his executors, administrators or assigns, shall and do from time to time, and at all times hereafter, stand possessed of, and interested in the same messuages, or tenements and premises, or so much and such parts thereof, or so many of them of which no such demise or lease shall then, or for the time being, have been made and perfected as hereinbefore is mentioned, IN TRUST, in the first place, to protect, save harmless and keep indemnified him the said (*purchaser*), his executors, administrators and assigns, of, from and against (1) all and every the covenants, provisoes, declarations and agreements in the said in part recited indenture of lease of the day of contained, which on the part of the lessee therein named, his executors, administrators or assigns, are thereby required to be performed or observed, as, to and concerning, and so far as the same relate exclusively or proportionably to the several messuages, or tenements and premises, of which no such demises or leases shall, for the time being, have been required to be granted as aforesaid, if any such there be, save only the covenant therein contained for payment of the said yearly rent or sum of £ ; and then and in the next place, and in the mean time subject thereto, IN TRUST, for the said several and respective purchasers of the same respectively, and their respective executors, administrators and assigns, and other the person or persons who shall or may, for the time being, be beneficially entitled to the same premises respectively, according to the true intent and meaning of the hereinbefore in part recited particulars and conditions of sale, and of these presents, and to, for or upon no other intent or purpose whatsoever. AND (2) the said (*vendor*), for himself, his heirs, executors and administrators, doth cove-

Further trust to protect himself, in the meantime, from covenants, &c.

And subject thereto in trust for the smaller purchasers.

---

(1) If several apportioned rents are to be reserved by the underlessors, say,

Apportioned rents.

" Such and such part or proportion of land, yearly rent, or sum of £ by the said original lease reserved as aforesaid, as such purchasers are respectively to pay under the said condition of sale in respect of the lots so by them purchased.

(2) If the assignment be made by trustees, executors or administrators, omit these covenants.

ASSIGNMENTS.
Leaseholds (largest lot).

Covenant by vendor that the lease is valid.

nant (1), promise and agree with and to the said (*purchaser*), his executors, administrators and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter or thing whatsoever by him the said (*vendor*) made, done, committed, executed or knowingly occasioned, suffered or omitted to the contrary, the said in part recited indenture of lease (2) mentioned to bear date the day of , is, at the time of the sealing and delivery of these presents, a good, valid and effectual lease, both at law and in equity, of and for the premises thereby expressed to be demised, and hereby assigned or mentioned, or intended so to be; and that the same, and the term of years therein mentioned to be thereby granted, and each of them is in full effect and in no wise forfeited, surrendered, assigned, determined or become void or voidable [or otherwise prejudicially affected in any manner howsoever]. [And that (3) the yearly and other rents in or by the same indenture of lease reserved, and all arrears thereof, and also the land-tax, sewers' rate, and all other taxes, rates and assessments chargeable upon the said premises, or the tenant or occupier, or tenants or occupiers thereof for the time being, for or in respect of the same have been, and are well and truly paid and satisfied up to the said day of last past. AND the several covenants and agreements therein contained, which on the part of the tenant or lessee of the same premises are required to be performed or observed, have been well and truly observed and performed down to the date of these presents.] AND also, that for and notwithstanding any such act,

That the rent and taxes have been paid.

And covenants performed up to this time.

That he hath right to assign.

Covenants for the title entitle covenantor to action in case of eviction.

(1) It is very essential that a purchaser should take covenants for the title, particularly that for quiet enjoyment, as, should he be evicted for defect of title, he will, without such covenants, be without any remedy either at law or in equity; see Boswell v. Vaughan, Cro. Jac. 196; Lysney v. Selby, 2 Ld. Raym. 1118; Bree v. Holbech, 2 Dougl. 654; Goodtitle, dem. Morris v. Morgan, 1 Durnf. and E. 755; Cripps v. Read, 6 ib. 606; Johnson v. Johnson, 3 Bos. and Pul. 162; Maynard's Ca. 2 Freem. 2, and 2 ib. 106; and see Co. Lit. 384 a. n. (1). ult. sec.; but by means of these covenants he may have an action on the case, &c. according to circumstances.

Vendor an assignee.

(2) If the vendor be an assignee only of the premises, say,

"The hereinbefore in part recited indentures of lease and assignment mentioned to bear date the day of and the day of are, and each of them is good, valid, subsisting and effectual both at law and in equity," &c.

(3) Where vouchers are produced for the rent and taxes up to the last quarter day, the lines within these brackets may be omitted.

ASSIGNMENTS.
Leaseholds (largest lot).

deed, matter or thing as aforesaid, he the said (*vendor*) now hath in himself good right, full power, and lawful and absolute authority to bargain, sell, assign, transfer and assure the said messuages or tenements, pieces or parcels of ground, and all and singular other the premises hereinbefore assigned or intended so to be [and every part and parcel thereof, with their respective rights, members, easements and appurtenances], unto the said (*purchaser*), his executors, administrators and assigns, for and during all the residue or remainder which is now to come and unexpired, by computation of time, of or in the said term or period of years so thereof granted as aforesaid [in the manner aforesaid, and according to the true intent and meaning of these presents]. AND that he the said (*purchaser*), his executors, administrators and assigns, shall and lawfully may, immediately from and after the expiration of these presents, [and from time to time] and at all times thereafter during the residue or remainder which is now to come and unexpired of or in the said term or period of years, by the said in part recited indenture of lease expressed to be granted as aforesaid, peaceably and quietly enter into and upon, and have, hold, use, occupy, possess and enjoy the same messuages or tenements, pieces or parcels of ground, and [all and singular other the] premises [hereby assigned or mentioned, or intended so to be], with their and every of their appurtenances, and receive and retain the rents, issues and profits thereof from the said day of last past, to and for his and their own use and benefit, without any action, suit, eviction, hindrance, molestation, disturbance or interruption whatsoever, of or by the said (*vendor* (1), his executors or administrators [or any or either of them], or any person or persons now or hereafter rightfully claiming or possessing, either at law or in equity, any estate, right, title, charge or interest, in, to, out of or upon the said premises, or any part thereof, by, from, under or in trust for him, them, or any or either of them [or by or through his, their, or any or either of their acts, deeds, defaults, means, procurement, consent or privity], other than any person or persons claiming

That the purchaser shall quietly enjoy.

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(1) As the covenant for quiet enjoyment is not preceded by the qualifying words of "for and notwithstanding, &c." which precede the covenants for the title, Howell v. Richards, 11 East, 633, these restrictive of the acts of the vendor to those claiming under him are very proper.

Qualifying words necessary.

ASSIGNMENT.

Leaseholds (largest lot).

or entitled under or by virtue of any leases, or (1) agreements for leases, of which counterparts have been produced unto the said (*purchaser*), his counsel or solicitor, at or before the sealing and delivery of these presents, so far as concerns their respective estates and interests under or by virtue of the same. AND that free and clear, and clearly and absolutely acquitted, exonerated and discharged, or otherwise, by and at the expense of the said (*vendor*), his executors or administrators, well and effectually protected, defended, kept harmless and indemnified from and against all and all manner of former and other assignments, [gifts, grants, bargains and sales, mortgages, wills, conveyances, surrenders, assurances, rents, taxes, arrears of rents and taxes, statutes, judgments, decrees, recognizances, extents, exonerations, forfeitures, re-entry, and cause and causes of forfeiture and re-entry, jointures, legacies] estates, rights, titles, trusts, interests, charges and incumbrances whatsoever, which at any time heretofore have been, or which at any time hereafter shall or may be made, committed, created or knowingly occasioned, or suffered by the said (*vendor*), his executors or administrators, or any person or persons now or hereafter lawfully or equitably, and rightfully claiming or possessing any estate, right, title or interest, by, from, under or in trust for him, them, or any or either of them, (save and except, and subject only to the rent or rents in and by the said hereinbefore in part recited indenture of lease reserved or made payable, from and after the day of last past, and the covenants and agreements therein contained, which on the part of the tenant, lessee or assignee of the said premises are from henceforth to be performed or observed during the now residue of the said term of years, and save also and except such leases, or agreements for leases as aforesaid, and the several estates or interests now subsisting under or by virtue of the same respectively.) AND MOREOVER that the said (*vendor*), [his executors and administra-

Free from encumbrances.

Further assurance.

Subsisting leases should be inspected on purchases.

(1) As possession of a tenant is deemed notice to a purchaser of the actual interest he has in the premises, Daniels v. Davison, 17 Ves. 433; and as the landlord's covenants with his lessee will be binding upon the subsequent owner, Richardson v. Sydenham, 2 Vern. 447, *sed vide* Robertson v. St. John, 2 Brow. Ch. Ca. 140; the purchaser's solicitor should never omit to inspect the subsisting leases, Anon. 2 Freem. 253: Pilkington v. Shaller, 2 Vern. 374; Sparkes v. Smith, ib. 275; for a purchaser having notice of a lease, must perform all the covenants contained in it, and notice of leases generally, is notice of their contents. Tayler v. Stibbert, 2 Ves. Jun. 437.

ASSIGNMENTS.

Leaseholds (largest lot).

tors], and all and every person and persons whomsoever now or hereafter lawfully claiming or possessing any legal or equitable estate, right, title or interest, in, to, out of, upon or respecting the said messuages or tenements, pieces or parcels of ground, and other the premises hereinbefore assigned or mentioned, or intended so to be (other than persons claiming and entitled under or by virtue of such leases, or agreements for leases as aforesaid, so far as concerns their respective estates and interests under or by virtue of the same), shall and will from time to time, and at all times hereafter, before the expiration of the said term of years, upon every reasonable request, and at the proper costs and expense of the said (*purchaser*), his executors, administrators or assigns, make, do, execute and perfect [or cause and procure to be made, done, executed and perfected], all and every such further and other lawful and reasonable acts, deeds, conveyances and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely or satisfactorily assigning, confirming and assuring, all and singular the same messuages, or tenements and premises, with their respective appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, for all the residue and remainder which shall be then to come and unexpired of the said term, as he the said (*purchaser*), his executors, administrators or assigns, or his or their counsel in the law, being of the degree of a barrister, shall advise and require [so that such further assurances, or any of them, do not contain nor imply any further or more general covenants on the part of the person or persons who shall be required to make or execute the same, than for or against the acts, deeds, omissions or defaults of him, her or them, and of his, her or their lessors or assigns, or executors or administrators, and so that the person or persons who shall be required to make or execute the same be not obliged to go from his, her or their then place, or respective places of abode for that purpose, without a reasonable and sufficient sum being previously paid, tendered or secured to him, her or them, for or in respect of his, her or their time, trouble and expenses], which said acts, deeds and assurances shall, unless otherwise declared or expressed, be and enure in corroboration of these presents, and of the estate and interest hereby, or mentioned, or intended to be hereby assigned or otherwise assured. AND in consideration of the premises aforesaid, the said (*purchaser*) doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*vendor*), his executors and administrators, in manner following, (that is to say) that he the said (*purchaser*), his executors, admi-

Covenant by purchaser to pay rent.

ASSIGNMENTS.
Leaseholds (largest lot).

nistrators and assigns, or some or one of them shall and will from time to time, and at all times hereafter, during the residue or remainder which is now to come and unexpired of the said term or period of years, or during such part or portion thereof as he or they shall or lawfully may have and enjoy peaceable and quiet possession under or by virtue of these presents, of the messuages, ground and premises expressed to be hereby assigned, according to the true intent and meaning hereof against the said (*vendor*), his executors and administrators, and all and every person and persons rightfully claiming from, under, or in trust for him or them as aforesaid, well and truly pay, or cause to be paid, the yearly rent of £ in and by the said hereinbefore in part recited indenture of lease reserved, at such times and in such manner as the same is thereby reserved and made payable [and also well and truly pay and satisfy all rates, taxes, duties and assessments chargeable upon, or payable for or in respect of the said premises, by the tenant, lessee, assignee or occupier thereof, from and after the day of now last past]; and also observe and perform all and every the covenants, provisoes, clauses, conditions and agreements which from henceforth during the same term or period, on his or their part or behalf are or ought to be performed and observed for and in respect thereof, or of any part thereof: and shall and will from time to time, and at all times hereafter, protect, defend, keep harmless and indemnified the said (*vendor*), his executors and administrators, and his and their lands and tenements, goods, chattels and effects from and against the same rents, covenants and agreements, and of and from all actions, suits, costs, damages and expenses whatsoever, which he or they, or any or either of them shall or may pay or sustain, or which shall or may arise or be occasioned by the non-payment, non-performance or non-observance thereof respectively, or of any of them. AND LASTLY, that he the said (*purchaser*), his executors, administrators and assigns, shall and will from time to time, and at all times, in the mean time, and until such demises or leases respectively shall be made and perfected, unless prevented by fire, or other inevitable accident, upon every request in writing, and at the cost and expense of all and every, or any of the purchasers of the several lots numbered respectively in the hereinbefore in part recited conditions of sale, produce and shew forth, or cause to be produced and shewn forth unto and for the perusal of him or them respectively, or of their, or any or either of their counsel or solicitor the said hereinbefore in part recited indenture of lease, and also shall and will at the like request, costs and

And perform covenants.

And indemnify vendor.

Covenant by purchaser to produce lease to smaller purchasers.

ASSIGNMENT.
Leaseholds (largest lot).

expense make and deliver, or cause to be made and delivered, to him, them or any or either of them, with all reasonable despatch, true and attested copies of the same indenture, or of any covenants, clauses, provisoes or agreements therein contained. IN WITNESS, &c.

Stamp.

*** *Ad valorem* on the sum paid by the purchaser of the lot assigned; see *post*, Vol. III. *voc.* "STAMP."

ASSIGNMENTS.

Leaseholds (copartnership).

No. CXLV.

An Assignment of Leasehold *Premises from one* Copartner *to another, on the expiration of Articles of Copartnership* (1).

Variations where the copartnership has been dissolved by mutual agreement. Also where the assignment is of a moiety, or other part only of the premises.

Parties.

THIS INDENTURE, made the day of [(2), in the year of the reign, &c. and] in the year of our Lord 18 , BETWEEN (*the retiring copartner*) of, &c. of the one part, and (*the continuing copartner*) of, &c. of the other part.

Recital of lease.

WHEREAS by an indenture of demise or lease, bearing date the day of , which was in the year , and made or expressed to be made between (*the lessor*) therein described of the one part, and (*the lessee*) therein also described, of the other part, the said (*lessor*), for the considerations therein mentioned, demised and leased ALL, &c. (3) TO HOLD the same with the appurtenances unto (4) the said (*lessee*), his executors, administrators and assigns, from the day of then last past, for the term of years to be thence next ensuing, under and subject to the clear yearly rent of £ , and to the several covenants, provisoes and agreements therein contained, which

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(1) See *ante*, MOD. PREC. Vol. VII. No. XIII. p. 216.

Brevity. (2) If brevity be particularly desired, the words within brackets may be omitted throughout the precedent.

Parcels. (3) Insert here a description of the premises from the lease.

Lease granted to copartners. (4) If the lease were granted to the parties jointly, say, "Unto the said (*copartners*), their executors, administrators and assigns, from the day of last past, for the term of years thence next ensuing, as tenants in common, under and subject, &c." *as above.*

ASSIGNMENTS.
Leaseholds (copartnership).

on the part of the said (*lessee*), his executors, administrators and assigns, is and are thereby required to be paid, performed or observed respectively. AND WHEREAS (1) by divers mesne assignments and other acts in the law, and particularly by a certain indenture of assignment of the day of , which was in the year , and made or expressed to be made between A. B. therein described of the one part, and the said (*retiring party*) of the other part, the said messuage or tenement and premises comprised in the hereinbefore in part recited indenture of lease of the day of were assigned (2) to, and are now vested in the said (*retiring party*), his executors, administrators and assigns, for the residue of the said term of years, subject to the rent, covenants and agreements in the said indenture of lease contained, on the tenant, lessee or assignee's part to be paid, performed and observed for or in respect of the same premises [as in and by the said indenture of assignment, reference being thereunto had, will more fully appear]. AND WHEREAS under or by virtue of a certain indenture, bearing date the day of , the said (*copartners*) have carried on the trade or business of in copartnership together (3) until the day of ,

Of assignment of lease to retiring copartner.

Of trade carried on in copartnership.

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(1) If the lease were granted immediately to the parties, this recital is to be omitted.

Lease to copartners.

(2) If the assignment were made to the copartners jointly, say,

Moiety, &c.

"Were assigned to and are now vested in the said (*copartners*), their executors, administrators and assigns for the residue of the said term of years, subject to the rent and covenants in the said indenture of lease contained on the tenant's or assignee's part to be performed or observed, for or in respect of the same premises, and also as between them the said (*copartners*), their respective executors and administrators, to the covenants, provisoes, articles and agreements contained, implied or referred to concerning the same, in and by the therein and hereinafter in part recited indenture or deed of copartnership."

(3) If the copartnership were dissolved by mutual consent, say,

Partnership dissolved by consent.

"AND WHEREAS under or by virtue of a certain indenture, bearing date the day of the said (*copartners*) have carried on the trade or business of in copartnership until the day of the date of these presents. AND WHEREAS it hath been mutually agreed between them that the said copartnership shall be dissolved and cease on the day of the date

ASSIGNMENTS.
Leaseholds (copartnership).

last past, when the same expired by effluxion of time. AND WHEREAS it was by the said articles of copartnership declared and agreed (amongst other things) that at the expiration of the said copartnership the said (*continuing party*) should take the dwelling-house and premises where the joint trade might then be carried on, and also the part or share of the said (*retiring party*) in the stock in trade, debts and effects of the said copartnership at such sum as the same should be valued at (*or as the case may be*) by two indifferent persons, to be chosen as therein mentioned, and which said sum it was agreed should be secured by the bond or obligation, in writing, of the said (*continuing party*), to be paid at the times and in the manner therein mentioned. AND WHEREAS the said messuage or tenement, and premises comprised in the said in part recited indenture of lease (being the premises where the said copartnership trade was carried on at the time of the dissolution thereof,) together with the stock in trade, have been valued to the satisfaction of the said (*retiring party*), at the sum of £ , (that is to say) the said messuage or tenement and premises, at the sum of £ and the said stock in trade at the sum of £ (1). AND WHEREAS the said (*continuing party*), in pursuance and performance of the agreement in the said in part recited indenture contained in that behalf, hath, by his bond or obligation in writing, bearing even date with these presents, become bounden unto the said (*retiring party*) for the payment of the said sum of £ , at the times, and in the manner therein mentioned. AND WHEREAS by an indenture already prepared and engrossed, bearing or intending to bear even date herewith, and made or expressed to be made between the same persons as are parties hereto, the said (*retiring party*), in pur-

Of valuation made.

Of bond given.

Of assignment of stock in trade by indenture of even date.

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hereof. AND WHEREAS it was by the said recited articles of copartnership declared and agreed, that at the expiration or other sooner determination of the said copartnership, the said (*continuing party*) should take the dwelling house, &c." *as above.*

Apportionment of consideration.

(1) This apportionment of the consideration-money to be paid by the continuing party, seems to be rendered necessary by the 55 Geo. 3. c. 184. which enacts, that "when any lands or other property contracted to be sold at one entire price for the whole, shall be conveyed in separate parts or parcels by different instruments, the purchase or consideration-money shall be divided and apportioned in such manner as the parties shall think fit, so that a distinct consideration for each separate part or parcel may be set forth in or upon the principal or only instrument of conveyance relating thereto."

ASSIGNMENTS.
Leaseholds (copartnership).

suance and performance of the agreement in the said in part recited indenture contained in that behalf, hath assigned over, or immediately upon the execution hereof will assign over unto the said (*continuing party*) the part or share of him the said (*retiring party*) in the stock in trade, and other the effects of the said copartnership; and in further pursuance of the said indenture, hath agreed to assign to the said (*continuing party*) the said messuage or tenement in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said last mentioned agreement, and in consideration of the said in part recited bond, so far as regards the said sum of £ , part of the said sum of £ in the condition thereof mentioned [and also for and in consideration of the further sum of 5*s*. of lawful current money of England to the said (*retiring party*), in hand well and truly paid by the said (*continuing party*) at or before the sealing and delivery of these presents, [the receipt whereof is hereby acknowledged], HE the said (*retiring party*) HATH granted, bargained, sold, assigned, transferred and set over, and by these presents DOTH grant, bargain, sell, assign, transfer and set over unto the said (*continuing party*), his executors, administrators and assigns, ALL (1) that the said messuage or tenement, piece or parcel of ground, and all and singular other the premises comprised in and expressed to be demised by the said hereinbefore in part recited indenture of lease of the day of [and so assigned and transferred unto the said (*retiring party*) by the said in part recited indenture of assignment, of the day of (*if so*)] as hereinbefore is mentioned, with all and singular the rights, members, easements, privileges, advantages and appurtenances to the same premises belonging, or therewith or with any part thereof now or usually occupied or enjoyed; together with the said hereinbefore in part recited indentures of lease and of assignment, and all mesne assignments and underleases, if any thereof, and all benefit and advantage of the same respectively, and of all and every the covenants, clauses, provisoes and agreements therein contained, which on the part of the

Of agreement for assignment of premises.

WITNESS.
That in consideration of sum secured to be paid to the retiring party,

the retiring party assigns

the leasehold premises.

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(1) If the lease or assignment were made to the copartners jointly, say, "ALL that undivided moiety, or full half part (the whole into two equal parts being considered as divided), and all and singular other the part or share of him the said (*retiring party*), under or by virtue of the said indenture of copartnership, or otherwise howsoever, of and in ALL, &c." *as above.*

Moiety, &c.

ASSIGNMENTS.
Leaseholds (copartnership).

lessor or landlord, or any underlessees or underlessee of the said premises are to be performed or observed; and all the estate, right, title, interest, term or number of years now to come and unexpired, property, claim and demand, whatsoever, both at law and equity, or otherwise howsoever of him the said (*retiring party*), of, in, to or out of the same premises and every part and parcel thereof, under or by virtue of the said indentures of lease and of assignment or either of them howsoever, TO HAVE AND TO HOLD (1) the said messuage or tenement, piece or parcel of ground, and all and singular other the premises hereby assigned or mentioned or intended so to be [and every part or parcel of the same, with their and every of their respective rights, members, privileges, easements, advantages and appurtenances], unto the said (*continuing party*), his executors, administrators and assigns, from henceforth, for and during all the residue or remainder of the said term or period of years, in and by the said in part recited indenture of lease granted, which is or may be yet to come and unexpired by efflux and computation of time [and in such and the same, or the like manner, and as beneficially to all intents and purposes as the said (*retiring party*) now holds or enjoys, or at or immediately before the sealing and delivery of these presents held or enjoyed the same], SUBJECT NEVERTHELESS to the payment of the yearly rent in and by the said in part recited indenture of lease reserved, or such part thereof as by the tenant or lessee of the same premises is or ought to be paid for or in respect thereof, from and after the day of now last past, and to the performance and observance of the covenants, provisoes and agreements therein contained, which on his or their part or behalf are or ought to be observed or performed from and after the date of these presents. (*Add covenants by the retiring party that the lease is valid, for quiet enjoyment and further assurance, and by the continuing party to pay rent and indemnify assignor* (2).) IN WITNESS, &c.

To hold to the continuing party for the residue of the term.

Subject to the rent and covenants contained in the lease.

Moiety, &c.

(1) If the lease or assignment were made to the copartners jointly, say, "TO HAVE AND TO HOLD the said undivided moiety, or full half part (the whole into two equal parts being considered as divided) of him the said (*retiring party*), of and in the said messuages or tenements, &c." *as above.*

Covenants to be inserted.

(2) The form of these covenants will be similar to those given *ante*, No. CXLIV. p. 506, et seq.; but if the premises were granted or assigned to the copartners jointly, these covenants must be omitted, and a covenant

inserted on the part of the retiring party, that he has done no act to encumber, the form of which covenant will be as follows:

Covenant by retiring party that he has not encumbered.

"AND the said (*retiring party*), for himself, his heirs, executors and administrators, doth hereby covenant, declare and agree with and to the said (*continuing party*), his executors, administrators and assigns, that he the said (*retiring party*) hath not at any time heretofore made, done, executed or knowingly suffered or omitted any act, deed, matter or thing whatsoever, whereby or by reason or means whereof, the said moiety or half part or share of him the said (*retiring party*) of and in the said messuages or tenements and premises hereby assigned or mentioned or intended so to be, or any part or parcel thereof, or the residue now to come of the said term of
years are, is, can, shall or may be impeached, charged, encumbered or prejudicially affected in any manner howsoever."

*** *Ad valorem* duty on the consideration money paid; see *ante*, p. 514. n. (1). Stamp.

ASSIGNMENTS.
Pension (poor).

No. CXLVI.

**An Assignment of an Army or Navy* Pension *for the indemnity of a Parish* (1).

I [*naming the pensioner or other applicant and stating such particulars as shall be requisite*] do hereby assign to the churchwardens and overseers of the poor of the parish of , the next payment of the said pension at the rate of *per diem* [*or as the case may be*], granted to me as , and payable from , in order to secure the said parish of the repayment of the sum of £ , advanced to me [*or* of the weekly sum of , ordered or agreed to be advanced to me, *as the case may be*] by such churchwardens and overseers.

Signed by the above named (*pensioner*) before me, one of his Majesty's Justices of the peace for , this day of . } (*Justice*)

Stamp. *** No stamp requisite.

59 Geo. 3. c. 12. (1) By sec. 30. of 59 Geo. 3. c. 12. it is enacted, that when any person entitled to a pension, superannuation, or other allowance, in respect of his service in the navy, royal marines, army, or ordnance, shall apply to the parish for relief for himself, his wife, or family, the churchwardens and overseers of the poor may require him to assign to them the next payment which shall become due to him, that they may retain so much thereof as they may contribute for his relief; and such churchwardens and overseers are authorized to advance for the support of him, his wife or family, any weekly sum not exceeding the rate of his pension or allowance, and to take an assignment thereof by way of security of repayment, in the form or to the effect of that given above.

It is also provided by the same act, that the assignment shall enable the churchwardens to receive the pension purported to be assigned, although the person die before the time of its becoming payable.

No. CXLVII.

*An Assignment of a Policy of Insurance against Fire (1).

Variations where the assignment is *absolute*; where it is *conditional*; and where upon *trust*.

THIS INDENTURE (2) made the day of , in the year, &c. and in the year of our Lord 18 , BETWEEN (*the assignor*) of, &c. of the one part, and the (*assignee*) of, &c. of the other part. WHEREAS by a certain deed-poll or instrument in writing, bearing date on or about the day of , being or purporting to be under the hands and seals of of the directors [*or as the case may be*] of the insurance company or office in , and numbered . ALL that messuage or tenement, [*or as the* Recital of policy of insurance.

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(1) Assignments of policies of insurance against fire, when the assignment is to the assignee absolutely, are usually inserted in the assignment, but in other cases, and particularly in those where it would be inconvenient or not desirable to exhibit the deed at the office, it should be by a separate instrument, *as above*.

(2) Where the assignment is absolute or the purchase be of warehoused goods, &c. passing by delivery without deed, and in other cases where there is not any covenant or stipulation proceeding from the assignee to the assignor, or some other party to the assignment, it may be by deed poll, but in either of the above cases it should be by indenture. It should be observed however that an assignment of a policy of insurance has been held not to be assignable from one person to another, at law, without the consent of the office; Sadlers' Co. v. Badcock, 2 Atk. 554; Lynch v. Duynell, 3 Brn. Par. Ca. 497; Duynell v. Lynch; but they are clearly so in equity when for a valuable consideration. And in every case of such assignment the assignor should be careful that it is delivered up to him, as an actual production of the policy is required in order to entitle him to the benefit of it, the entry in the books of the insurance office not being sufficient for this purpose, see Rex v. Doran, 1 Esp. Rep. 127. and vide also 4 Durn. and East; 340. 690. Delany v. Stoddard, 1 ibid. 26. Innes v. Dunlop, 8 ibid. 595. Deed poll.

ASSIGNMENTS.
Policy (fire).

case may be] with the outbuildings and appurtenances thereof [and the goods, furniture, merchandize, and effects therein or thereupon] were and now are insured against loss or damage by fire, for the term of years, from the day of ; AND WHEREAS by indenture bearing date on or about, &c. *or* even date herewith [*as the case may be*], and made or expressed to be made between, &c. the said messuage, tenement, effects, and premises, were conveyed and assured unto the said (*assignee*), and it was agreed that the benefit of the said insurance should also be assigned to him in the manner hereinafter mentioned. NOW THEREFORE THIS INDENTURE FURTHER WITNESSETH, that for the considerations in the said indenture, and of the sum of £ , of lawful money of England, to the said (*assignor*) in hand paid by the said (*assignee*), at the time of the signing and sealing these presents, the receipt whereof is hereby acknowledged, He the said (*assignor*) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, set over, and confirm unto the said (*assignee*), his executors, administrators, and assigns, ALL that the said deed-poll or policy of insurance purporting to bear date the day of , in the year , and numbered , and so being, or purporting to be under the hands and seals of three of the directors of the insurance office or company, as hereinbefore is mentioned; and all and every sum and sums of money now or hereafter being or to be due or payable thereupon by virtue thereof, To HAVE, receive, and take the said policy of insurance, and all and every sum and sums of money which shall or may become due and payable thereupon or by virtue thereof, and all other benefit and advantage whatsoever which shall or may accrue from or in respect of the same, unto the said (*purchaser*), his executors, administrators, and assigns, to and for his and their own proper use and benefit, free and clear of and from all and all manner of charges, liens, and encumbrances whatsoever.

WITNESS. Assignment of policy.

To hold to assignee absolutely.

Assignment *conditional* by way of *mortgage.*

[*If the assignment is intended to be conditional, as by way of mortgage, add,*] SUBJECT nevertheless to such or the like equity or right of redemption as in or by the said in part recited indenture of the day of is expressed with respect to the messuages, lands, and hereditaments thereby granted and released, or otherwise assured. AND further, that he the said (*mortgagor*), his executors or administrators, shall and will from time to time, and at all times hereafter so long as he or they shall have or be entitled to any equity or right of redemption of or in the said premises, at his and their own proper costs and charges, when and as often as the said

Covenant to keep the premises insured.

policy of insurance hereinbefore mentioned or intended to be assigned shall be within one month of expiring renew the same, or otherwise again insure or cause to be insured the said messuages or tenements, buildings, [goods, wares, merchandize,] and premises, with the same or some other respectable office for insurance against fire, to be approved of by the said (*mortgagee*), his executors, administrators, or assigns, in the sum of £ at the least, for one other term or period of years, to be computed from the expiration of the said now or then existing policy, so and in such manner, that the messuages or tenements and buildings mentioned or intended to be by the said indenture assigned, and every of them, shall and may at all times be well and effectually kept insured in the said sum of £ at the least; And shall and will from time to time, at the reasonable request of the said (*mortgagee*), his executors, administrators, or assigns, produce and shew forth unto him and them the receipt and receipts, or other acquittances, vouchers or documents, for such sum or sums of money as he the said (*mortgagor*), his executors or administrators, shall have paid for effecting any such assurance. AND further, that he the said (*mortgagor*), his executors or administrators, shall and will at the request in writing, under the hand of the said (*mortgagee*), his executors, administrators, or assigns, but at the cost and expense of him the said (*mortgagor*), his executors or administrators, well and effectually assign and make over such renewed or fresh policy or policies, and all benefit of the same, unto the said (*mortgagee*), his executors, administrators, or assigns, for the better securing the said sum of £ and interest, in the manner aforesaid, and according to the true intent and meaning of these presents. And in the mean time and until such assignment shall be made, the said policy of insurance, and all benefit and advantage to be had or derived therefrom, shall be and continue in trust for the said (*mortgagee*), his executors, administrators, and assigns, for the intents and purposes aforesaid. PROVIDED always, and it is hereby further declared and agreed by and between the said parties, and particularly by him the said (*mortgagor*), that in case he the said (*mortgagor*), his executors or administrators, shall at any time refuse, decline, or neglect to insure or keep insured the said messuages or tenements, [goods, wares, merchandize,] and premises, or any part thereof, or to produce and show forth the receipts or other acquittances, vouchers, or documents for the same, it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, to insure or cause to be insured the said premises in the said sum of £ in the names of them

And produce vouchers.

Will assign new policy.

In default, mortgagee may insure.

ASSIGNMENTS. *Policy (fire).*

the said (*mortgagor*) and (*mortgagee*), their respective executors, administrators, or assigns, and from time to time to keep the same insured, either from year to year, or for any longer period than a year, at his or their pleasure or discretion. AND it is hereby declared and agreed, that the sum or sums which shall by him or them at any time or times be advanced or paid for or in respect of such insurance or insurances (not exceeding in the whole the sum of £), together with interest for the same after the rate of £5 per cent. per annum, shall be chargeable upon the premises hereby assigned, as or by way of a further charge thereupon, and the said premises, or any part thereof, shall not be redeemed or redeemable until full payment and satisfaction shall be made, as well of the sum or sums which shall have been so advanced and paid for on account of such insurance or insurances, together with interest for the same after the rate aforesaid, as of the said sum of £ and interest. AND further, that in case the said messuages or tenements, and premises so insured, or any part thereof, shall be destroyed or damaged by fire, all and every the sum and sums of money which shall be received upon or by virtue of the said policy or policies, shall be laid out and expended in substantially rebuilding or repairing the said messuages and premises, or such parts thereof, as shall be destroyed or damaged, unless the same shall be paid down by the said insurance office or company, and then and in such case the same or any part thereof shall be so laid out and expended, or be taken and received by the said (*mortgagee*), his executors, administrators, and assigns (at his and their option and election), in or for payment and discharge of the said sum of £ and interest, and such other sum or sums as shall be then chargeable upon the said premises, or otherwise due or owing to him or them under or by virtue of these presents. AND, &c. (*add power of attorney for the* (*mortgagee*) *to receive the money* (1), *adding*) and the said (*mortgagor*) doth hereby declare and agree that the receipt of the said (*mortgagee*) for all and every or any sum or sums which shall at any time be due, payable, or paid, upon or by virtue or in respect of the said policy or of the insurance thereby effected, shall be a good, sufficient, and absolute discharge to the said company or office and person or persons paying the same, without the said company or office or person or persons being in anywise answerable for or liable to see to the application thereof or any part thereof, or obligated to enquire or know whether

Sums paid by mortgagee to be a charge on the premises.

Insurance money to be applied in discharge of mortgage.

Power of attorney for mortgagee to receive insurance money.

(1) See *post*, p. 525.

the said mortgage debt or any part thereof or any interest thereupon be then due and in arrear or not; so nevertheless that the said in part recited indenture be then in the hands of the said (*mortgagee*), his heirs, executors, administrators, or assigns [*if there be a power of sale in the mortgage deed, a covenant may be inserted, that no sale shall be made until after a given period* (1)].

Assignment on *trusts*.

[*If the assignment be upon trusts, as in trust for an annuitant, it may be declared to be*] UPON the trusts, and to and for the ends and purposes hereinafter expressed concerning the same (2), *adding*,

Covenant by grantor to keep policy on foot.

And the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*grantee*) and (*annuitant's trustee*), and their respective executors, administrators, and assigns, that he the said (*grantor*) his heirs, executors, or administrators, shall and will from time to time during the continuance of the said annuity, yearly rentcharge, or annual sum of £ , well and truly pay or cause to be paid to the said insurance office or company all such annual and other premium or premiums, and other sum or sums of money which shall from time to time or at any time be payable for keeping the said policy on foot, and also shall and will, from time to time, at the request of the said (*trustee*) and (*grantee*), or either of them, or their respective executors, administrators, or assigns, produce and shew unto him or them, receipts and sufficient vouchers for all and every such payment or payments.

In default grantee may insure.

AND also that in case the said (*grantor*), his heirs, executors, or administrators, shall neglect or refuse to make such payment or payments, or to produce such receipts or vouchers as aforesaid, it shall be lawful for the said (*grantee*) or (*trustee*) or their respective executors, administrators, or

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(1) See *post*, p. 525.

(2) If the assignment be made to the insurance office itself, the hadendum may be,

Assignment to the assurance office.

"TO HAVE AND TO HOLD, receive, take, and enjoy the policy of nsurance hereby assigned or intended so to be, and all and every the um and sums of money at any time or times, and from time to time, o become due upon or by virtue of the same, and all and every other enefit and advantage to be had or derived therefrom, either at law r in equity, unto and by them the said (*trustees of the office*) their ecutors, administrators, and assigns, In trust nevertheless, for the id insurance company, and the several proprietors thereof, id to be disposed of from time to time as the directors for the time eing of the same company shall direct."

ASSIGNMENTS.
Policy (fire).

assigns, at any time or times, to pay such sum or sums of money as shall be requisite to keep the said messuages, or tenements and buildings, insured from loss or damage by fire, in the said sum of £ , and that he the said (*grantor*), his heirs, executors, or administrators, shall and will from time to time, on demand, well and truly pay, or cause to be paid, unto the said (*grantee*), his executors, administrators, or assigns, all and every the sum and sums of money which shall be so paid or advanced by him or them, with interest for the same, after the rate of £5 per cent. per annum, from the time or respective times of paying the same; and that in case of default in payment thereof, or of any part thereof, the same shall, to the extent of £ be considered a charge and chargeable upon the lands and hereditaments hereby demised, and it shall be lawful for the said (*grantee*) or (*trustee*), their respective executors, administrators, and assigns, by all or any of the ways and means hereinbefore given or mentioned for recovering the arrears of the said annuity, yearly rent-charge, or annual sum of £ or other lawful means whatsoever, to levy, raise, and pay the same. AND it is hereby agreed and declared, that in case the said messuages, tenements, or buildings, or any of them, or any part thereof, shall at any time or times during the continuance of the said annuity, yearly rent-charge, or annual sum of £ , be burnt down, destroyed, or damaged by fire, then and in such case, and so often as the same shall happen, all such sum and sums of money as shall or may be recovered or received by virtue of any such insurance as aforesaid, shall be laid out and expended in the re-building or repairing (as the case may require) the said messuages and premises, or such part thereof as shall be so burnt down, destroyed, or damaged; or (at the request of the (*grantee*), his executors, administrators, or assigns, if the same shall be paid down by the said insurance office), after payment thereout of all arrears of the same annuity, yearly rent-charge, or annual sum, and all costs and expenses in respect thereof, shall be invested in the purchase of such Bank or other annuities or on Government Securities as the said (*grantee*), his executors, administrators, or assigns, shall think fit, in the name or names of a trustee or trustees to be by him or them named, upon or for such or the like trusts, ends, intents, and purposes as are hereinbefore declared or expressed concerning the sum or sums to arise by sale, mortgage, or other disposition of the said hereditaments, under or by virtue of the power or authority contained in the said in part recited indenture in that behalf, or such other trusts, and in such manner and form, as the counsel in the law of the said (*grantee*), his executors, administrators, and assigns, shall reasonably require

Application of insurance money.

or advise, for the purpose of securing and keeping down the said annuity, yearly rent-charge, or annual sum of £ , at the times and in the manner therein appointed for payment thereof. AND the said (*grantor*) doth hereby make, constitute, and appoint the said (*grantee*), his executors, administrators, and assigns, his true and lawful attorney and attornies for receiving all and every sum and sums of money which may at any time or times be payable for or by virtue of such insurance as aforesaid, with full power to appoint any other person or persons in his or their place or stead for that purpose; and doth hereby expressly declare that the receipt and receipts of the said (*grantee*), his executors, administrators, or assigns, or of his or their attorney or attornies, shall from time to time, and at all times, be a good, sufficient, and effectual discharge for any sum or sums which shall be payable or paid to him or them, for or in respect of any such insurance as aforesaid, which said power or authority last hereinbefore given to the said (*grantee*), his executors, administrators, or assigns, he the said (*grantor*) shall not nor will at any time hereafter, during the continuance of the said annuity, yearly rent-charge, or annual sum of £ , or the subsistence of any arrears thereof, revoke or in any manner cancel or make void without the consent in writing of him the said (*grantee*), his executors, administrators, or assigns, in that behalf. *There may here be added, if so agreed* (1), AND the said (*grantee*) DOTH hereby also covenant and agree with the said (*grantor*) in manner aforesaid, that he the said (*grantee*), his executors, administrators, or assigns, shall not nor will without the direction or consent of the said (*grantor*), sell, mortgage, or otherwise dispose of the policy of insurance hereinbefore assigned, or any interest therein, unless and until the said annuity or yearly sum hereby granted shall be twelve calendar months in arrear; nor in case of the sale thereof (which shall be by public auction only, and not by private contract) until one calendar month's notice in writing of an intended sale thereof shall have been given to or left at the then or last place of abode of the said (*grantor*); and further that in case of any such sale, mortgage, or other disposition thereof, he the said (*grantee*), his executors, administrators, and assigns, shall and will stand possessed of and interested in the money to be produced by or raised upon the same; (after payment of all arrears of the said annuity or yearly sum, and all costs, charges, and expenses attending any such sale,

Letter of attorney to receive insurance money.

Covenant by trustee not to sell the policy till 12 months' arrears of annuity.

(1) See a different form, *post*. p. 580.

ASSIGNMENTS.
Policy (fire).

mortgage, or other disposition, or occasioned by the said annuity being in arrear), and of all other monies to be received for or by virtue thereof in pursuance of these presents in the mean time, in trust for the said (*grantor*), his executors, administrators, and assigns, subject only to future arrears, if any, of the said annuity, and pay and apply or invest the same in the purchase of 3 per cent. Consolidated Bank Annuities, or upon some other Government Securities, or some other life annuity or annuities, to be holden upon proper trusts to be declared in writing under the hand or hands of the said (*grantee*), his executors, administrators, or assigns, for keeping down the said arrears. IN WITNESS, &c.

No. CXLVIII.

An Assignment of a Policy of Assurance *on the* Life *of an Assurer.*

Variations where it is on the life of some other person. Also where the assignment is *absolute*, where *conditional*, and where upon *trust*.

THIS INDENTURE (1) made the day of in the year, &c. and in the year of our Lord 18 . BETWEEN the (*assignor*) of, &c. of the one part, and the (*assignee*) of, &c. of the other. WHEREAS by a certain deed-poll, instrument or policy of insurance purporting to be under the hands and seals of certain directors of the insurance office or company in , bearing date on or about the day of in the year , and numbered , the said office or company, in consideration of the yearly sum of £ , to be paid by the said (*assignor*) during his natural life [*or* during the natural life of A. B. of, &c. *as the case may be*], insured the payment to the executors, administrators or assigns, of him the said (*assignor*), of the sum of £ within calendar months next after his decease [*or* to him the said (*assignor*), his executors, administrators or assigns, within three calendar months next after the decease of the said A. B.]; AND WHEREAS, &c. (*recite the deed, if any, by which the policy was agreed to be assigned*); by which said indenture it was agreed that the benefit of the said policy should be assigned to the said (*assignee*) as a further security for the payment of the said sum of £ , in case of his decease, during the subsistence of the aforesaid trusts (*or as the case may be*)]. NOW THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement, HE the said (*assignor*) HATH bargained, sold, assigned, transferred and set over,

Recital of policy.

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(1) See *ante*, p. 519. n. (1) and (2).

ASSIGNMENTS.
Policy (life).

WITNESS.

Assignor assigns policy to assignee.

and by these presents DOTH bargain, sell, assign, transfer and set over unto the said (*assignee*), his executors, administrators and assigns, ALL that the said in part recited instrument or policy of insurance so granted to or taken out by him the said (*assignor*), from or with the said office or company, as hereinbefore is mentioned, AND all and every sum or sums of money thereby insured and to become due and payable by virtue thereof, and all other benefit and advantage to be derived or accrue from the same; and all the estate, right, title and interest, property, claim and demand whatsoever, of him the said (*assignor*) of, in or to the same, and every or any part thereof, and all powers and remedies for recovering the same, TO HAVE AND TO HOLD, receive, take and enjoy the said instrument or policy of insurance, sum and sums of money, and all and singular other the premises hereby assigned or otherwise assured, or intended so to be, unto and by him the said (*assignee*), his executors, administrators and assigns, in as full and beneficial manner, to all intents and purposes, as he the said (*assignor*) [his executors or administrators] could or might have had, holden or enjoyed the same if these presents had not been made; but nevertheless, upon the same or the like trusts, and for the same or the like ends, intents and purposes, as in or by the said in part recited indenture are declared or expressed concerning the messuages, &c. therein granted and released, or otherwise assured, and the monies to arise by any sale or disposition thereof, or as nearly thereto as circumstances will admit; AND he the said (*assignor*) DOTH, by these presents for himself, his executors and administrators, name, constitute and appoint the said (*assignee*), his executors and administrators, the true and lawful attorney (1) and attornies, irrevocable of him the said (*assignor*), and of his executors and administrators, and in the name or names of him or them, or otherwise, as may be expedient, to ask, demand, sue for, recover and receive, and sign and give effectual discharges for all and every sum and sums of money which shall or may at any time hereafter become due or payable on or by virtue of the said instrument or policy of insurance, or which may be paid

To hold upon trusts, &c.

Letter of attorney.

Letter of attorney.

(1) Although this power cannot be exercised till after the death of the person whose life is assured, and by such event, if he be the assignor, will be void, yet it is not therefore unavailable, as the policy is saleable to the office during the life of the insurer—and it being the assurer's property, the office must pay the purchase money to him, unless he empower some other person to receive it; and if the party insures the life of another person, the letter of attorney authorizes the office to pay the sum insured upon his death to the assignee.

by the said office on any sale to them thereof, and to sign the names or name of him or them, to or for any receipts or discharges for the same, which said receipt or discharge shall be as good and effectual, to all intents and purposes, as if the same had been signed by him the said (*assignor*) [*or* by the executors or administrators of him the said (*assignor*)]; and doth further give unto him and them full authority to act therein as to him the said (*assignee*), his executors or administrators, shall seem meet; he the said (*assignor*), for himself, his executors and administrators, hereby ratifying and confirming, and agreeing that he and they shall and will, when thereunto required, ratify and confirm all and whatsoever the said (*assignee*), his executors or administrators, shall lawfully do, or cause to be done in or about the premises by virtue of these presents, with full power, to substitute, depute and appoint, one or more attorney or attornies under him or them, for the purposes aforesaid, or any of them. AND further, that he the said (*assignor*) shall and will, at any time or times hereafter, at the request of the said (*assignee*), his executors, administrators or assigns (upon having reasonable notice given to him thereof), appear in person at the said insurance office, or any other office or offices of insurance, within the city of London or Westminster, and also if and when thereunto required, deliver in writing unto any such office or offices his place of abode, and also satisfactory certificates or other documents of his being alive, and of the state of his health and constitution, either for the purpose of enabling the said (*assignee*), his executors, administrators or assigns, to keep on foot, or renew, or establish the policy of assurance expressed to be hereinbefore assigned, or to insure any further or other sum or sums of money upon the life of him the said (*assignor*), if he, they, or any or either of them shall think fit; and moreover that he the said (*assignor*) shall not nor will, at any time hereafter, during the subsistence of any of the trusts of the said in part recited indenture, or of these presents, do, or cause to be done, any act or thing whatsoever whereby the policy of assurance hereby assigned, or any future or other policy of assurance to be granted, or taken out as aforesaid, shall or may become impeached or impeachable, or void or voidable, or the benefit thereof lost or diminished. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties hereto, that no sale, mortgage or other disposition of the policy of assurance hereby assigned, or any interest therein shall be made, or contracted to be made, with or to any person or persons whomsoever during the lifetime of the said (*assignor*), without the consent in writing of him the said (*assignor*) first obtained for that purpose:—

Assignor will appear at insurance office.

Restriction as to disposition of policy.

ASSIGNMENTS.
Policy (life).

[*or* (*if so agreed*) unless and until all and singular the messuages, lands and hereditaments, and other the trust property aforesaid, shall be wholly sold and disposed of under the trusts of these presents, and the produce thereof shall be found insufficient for satisfying the said trusts, nor in either of the said cases, until six calendar months' previous notice in writing of such sale, or intended sale, or other disposition thereof, shall be given to him the said (*assignor*) under the hands or hand of the said (*assignee*), his executors, administrators or assigns] and which sale, or exposal to sale, if made, shall be by public auction, and not by private contract (1).

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(1) See a fuller form by way of covenant, *ante*, p. 525.

No. CXLIX.

*An Assignment of a Policy of Insurance upon a Ship.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*the assignor*) of, &c. SENDS GREETING. WHEREAS the said (*assignor*) by a certain deed-poll or policy of insurance granted by the *Royal Exchange* insurance company, *or as the case may be* (1), bearing date on or about the day of and numbered , under the hands and seals of of the directors of the said company, insured the sum of £ upon the ship or vessel called the whereof was master, for her voyage from to as by relation being thereunto had will more fully appear. AND WHEREAS (*the assignee*) of, &c. has agreed with the said (*assignor*) for an assignment of the said policy for the considerations hereinafter expressed. NOW THESE PRESENTS WITNESS, that he the said (*assignor*), in pursuance of the said agreement, and for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to him in hand well and truly paid by the said (*assignee*), the receipt whereof is hereby acknowledged, he the said (*assignor*) HATH assigned, transferred and set over, and by these presents DOTH assign, transfer and set over

Recital of policy.

WITNESS. Assignor assigns.

(1) By the act 6 Geo. 1. c. 18. all policies and contracts for assurance of or upon any ship or ships, goods or merchandizes at sea, or going to sea, or for taking any premium or other reward for such policies, by any corporation, body politic, or persons acting in society or co-partnership other than the *Royal Exchange* and *London* Assurances, are declared to be void. But this act is repealed by 4 Geo. 4. c. 114. provided that nothing in that act shall extend to affect the rights and privileges of the said corporations of the *Royal Exchange* Assurance and *London* Assurance, otherwise than by making it lawful for other corporations and bodies politic, and persons acting in society or partnership, to grant and make such policies of assurance [and also contracts of bottomry] as mentioned in the act of 6 Geo. 1. § 2.

6 Geo. 1. c. 18.

4 Geo. 4. c. 114.

ASSIGNMENTS.

Policy (marine).

unto the said (*assignee*), his executors, administrators and assigns, ALL that the said recited deed-poll, instrument or policy of insurance, and all and every sum and sums of money therein or thereby assured, and which now is or are, or at any time hereafter shall or may be due and payable thereupon, and all the right, title, interest, claim and demand of him the said (*assignor*) in and to the same, TO HAVE, hold and receive the same unto him the said (*assignee*), his executors, administrators and assigns, to and for his and their own proper use and benefit. And for the better recovery, &c. (*add letter of attorney*) (1). IN WITNESS, &c.

To hold to assignee absolutely.

(1) See *ante*, p. 525.

Stamp.

*** *Ad valorem* duty on consideration money.

ASSIGNMENTS.

Publication (copyright).

No. CL.

*An Assignment of a Publication or Copyright (1) of a Book (2). Variations where the right is in a Print or Engraving (3). Where in a cast of Busts (4), &c.

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN

(1) The subject of the above assignment, in its original state, was the learned Essays on Contingent Remainders and Executory Devises by *Mr. Fearne*, but they were afterwards upon his decease edited for the benefit of his *destitute* widow, by the late *Mr. Powell*—strange that the widow of one possessing such rare abilities and legal acquirements should be in poverty! But the genius of *Mr. Fearne* could no longer bend to the drudgery of his profession than till he had become pre-eminently master of it, when he suffered his thoughts (as has been said) to be seduced from the abstruse and lucrative science of the law, to the more alluring study and practical pursuits of mechanical inventions of a very inferior kind.

(2) By 54 Geo. 3. c. 156. it is enacted, that the author of any book, and his assigns, shall have the sole liberty of printing and reprinting the same for the full term of twenty-eight years, to commence from the day of first publishing the same; and if the author shall be living at the end of that period, then for the residue of his natural life; and see Clementi v. Walker, 2 Barn. and Cress. 261. Books.

(3) By 8 Geo. 2. c. 13. the property of prints is vested in the inventor for fourteen years. And by the 7 Geo. 3. c. 38. the like privileges are extended to all persons designing or etching, in mezzo-tinto or chiara obscuro, from his own design, any historical print, or the print of any portrait, conversation, landscape or architecture, map, chart or plan, or other print or prints whatsoever, and the right of printing and re-printing given by the act 8 Geo. 2. c. 13. is extended for the space of twenty-eight years from the day of publication. Prints.

(4) By 38 Geo. 3. c. 71. the sole right of making models or casts is vested in the original proprietors for fourteen years. And by 54 Geo. 3. c. 56. the sole right and property in new and original sculpture, models, copies and casts is vested in the proprietors for fourteen years; and after the expiration of the said term of fourteen years, the right shall return to the proprietor, if living, for a further term of fourteen years. Busts.

ASSIGNMENTS.
Publication (copyright).

(*the author or artist*) of, &c. of the one part, and (*publisher*) of, &c. of the other part. WHEREAS the said (*author*) hath written and compiled a book entitled (1), &c. *or* the said (*artist*) has engraved, &c. (*as the case may be*). NOW THIS INDENTURE WITNESSETH, that the said (*author, &c.*), for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland to him in hand paid by the said (*publisher*) (the receipt whereof, and that the same is in full for the absolute purchase of the said work, the said (*author*) doth hereby acknowledge) he the said (*author*) HATH bargained, sold and assigned, and by these presents DOTH bargain, sell and assign unto the said (*publisher*), his executors, administrators and assigns, ALL (2) that the said book or work entitled, &c. (*or as the case may be*), and hath agreed with the said (*publisher*) for an assignment to him thereof upon the terms and conditions hereinafter expressed and all his copyright, title, interest, property, claim and demand whatsoever, of, in and to the same, TO HAVE AND TO HOLD the said book or work, and copyright, and all profit, benefit and advantage which shall or may arise by and from printing, reprinting and vending the same unto him the said (*publisher*), his executors, administrators and assigns, for his and their own proper use and benefit. PROVIDED ALWAYS NEVERTHELESS, and these presents are upon this express condition, that the number to be printed of the first, and each and every other edition or impression of the said book shall not exceed copies, and that the said (*publisher*), his executors, administrators and assigns, shall and will pay unto the said (*author or artist*), his executors, administrators and assigns, the further sum of £ of lawful money aforesaid, for and upon the reprinting or making a second and each and every other future and further edition or impression of the said book or work, (*or as the case may be*) for and towards a further reward and satisfaction to the said (*author or artist*) for his writing and compiling the same, and every of them, to be made be-

WITNESS.
Author assigns to publisher, copyright.

To hold absolutely.

Further sum to be paid for future editions.

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(1) If the assignment be of a print or engraving, say,

"HATH designed and engraved, etched, &c. a certain historical composition, representing, &c. *or* musical piece, called, &c. (*as the case may be*).

If a bust or cast, say,

"HATH made and executed a new and original sculpture *or* model, *or* copy, *or* cast (*as the case may be*), of, &c.

(2) If assignment be of an engraving or print, or of a cast or bust, or a musical piece, say *as above*, n. (1).

fore the publication of the said several impressions or editions, or any part thereof, by the said (*publisher*), his executors, administrators or assigns, or by any other person or persons, for or under him, them or any of them. AND the said (*publisher*), for himself, his executors, administrators and assigns, DOTH hereby covenant, promise and agree to and with the said (*author or artist*), his executors, administrators and assigns, that he the said (*publisher*), his executors, administrators and assigns, shall and will pay, or cause to be paid, unto the said (*author or artist*), his executors, administrators and assigns, the said sum of £ of lawful money aforesaid, at and upon the reprinting, and before the publication of the said second, and every other future and further edition and impression which shall or may be made of the said book or work, according to the proviso aforesaid, and the true intent and meaning of these presents. IN WITNESS, &c.

Covenant by publisher to pay.

*** *Ad valorem* Stamp on the consideration money.

Stamp.

ASSIGNMENTS.

Stock in trade (copartnership).

No. CLI.

**An Assignment of* Stock in trade (1) *from representative of a deceased Copartner to a surviving Partner*

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 . BETWEEN (*the assignor*) of, &c. executor of the last will and testament of (*deceased copartner*), late of, &c. deceased, of the one part, and (*surviving copartner*) of, &c. of the other part. WHEREAS the said (*deceased partner*) in his lifetime, together with the said (*surviving partner*), were copartners and joint traders together in the trade or business of , which trade, by virtue of the death of the said (*deceased partner*), is now vested in the said (*surviving partner*); And whereas there was due and owing from the said (*surviving partner*), on account of their said late joint trade and the stock thereof, to the estate of him the said (*deceased partner*), at the time of his death, the sum of £ , which, when paid, will be in full of all further claims and demands of him the said (*assignor*), as executor of the said (*deceased partner*), upon or out of the said joint trade, or the stock thereof: NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland to him the said (*executor*) in hand well and truly paid by the said (*surviving partner*), at or before the sealing and delivering hereof, in full satisfaction and discharge of all monies, stock and other demands whatsoever due to the estate of the said (*deceased partner*), from the said (*surviving partner*) or from the said late joint stock of the said late copartnership, the receipt whereof, and that the same is so in full as aforesaid, he the said (*executor*) doth hereby acknowledge, and thereof and therefrom doth hereby acquit, exonerate and for ever discharge, as well the said (*surviving partner*), his executors and administrators, as also the said joint stock of the said late copart-

WITNESS. Executor assigns.

Lease.

(1) For an assignment to the continuing partner, of the premises where the business was carried on, see *ante*, No. CXLV. p. 512.

ASSIGNMENT.

Stock in trade (copartnership).

nership. AND for the considerations hereinbefore mentioned, he the said (*executor*) HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over unto him the said (*surviving partner*), his executors, administrators and assigns, ALL and every the part and parts, share or shares whatsoever belonging to him the said (*deceased partner*) deceased, of and in all the goods, wares, merchandizes, debts and other the effects whatsoever mentioned and set forth in the total or balance of a rest book thereof, made, examined and signed by them the said (*executor*) and (*surviving partner*) on the day of the date hereof; and also all other the stock and estate whatsoever now belonging to the estate late of him the said (*deceased partner*) deceased, by virtue of his being a copartner with him the said (*surviving partner*) as aforesaid, and all the right, interest, property, benefit, advantage, claim and demand whatsoever, both at law and in equity, of him the said (*executor*), of, in, to or out of the said stock and premises hereby assigned, or any part and parcel thereof, by virtue of the indenture or articles made on the said copartnership, or of the last will and testament of the said (*deceased partner*), or otherwise howsoever.

Assignment of debts, &c.

And for the better and more effectually enabling him the said (*surviving partner*) to have and receive all and singular the said hereby assigned premises to and for his own use and benefit, he the said (*executor*) DOTH hereby make, ordain, authorize, constitute and appoint, &c. (*Power of Attorney*) (1). PROVIDED ALWAYS, and so that he the said (*surviving partner*), his executors, administrators and assigns, shall and do at all times hereafter, save harmless and keep indemnified him the said (*executor*), his executors and administrators, of, from and against all costs, charges and damages, which he, they or any of them, shall or may pay or sustain by reason of his, their or any of their names being made use of, in any such action or suit to be brought or commenced by virtue of the power hereby given (2). AND he the said (*executor*), for himself, his executors and administrators, doth covenant, promise and agree, to and with the said (*surviving partner*), his executors, administrators and assigns, by these presents, in the manner following, (that is to say) that he the said (*executor*) hath not made, done, committed or knowingly suffered any act, matter or thing whatsoever, whereby or by means whereof the said hereby assigned debts and premises, or

Power of attorney to receive debts.

Executor being indemnified.

Covenant that the executor has not incumbered.

(1) See *ante*, No. LXXVIII. p. 255. also *ante*, p. 525.

(2) A bond is sometimes given for indemnity, which see *post*. Vol. II. BOND."

ASSIGNMENTS.

Stock in trade (copartnership).

any part thereof, are, or is, or shall or may be in any wise prejudiced, released, discharged or encumbered, in any manner howsoever; nor shall nor will, at any time hereafter, do any act matter or thing whatsoever, whereby to release or discharge all or any of the said hereby assigned debts and premises, or any part thereof, or the power or authority hereby given for recovering the same, or any action or suit to be thereupon brought for the recovery thereof, without the consent of him the said (*surviving partner*), his executors or assigns, first had in writing for that purpose: AND also, that he the said (*executor*), and all other persons lawfully claiming any right or interest, of, in or to the said hereby assigned premises, or any part thereof, by, from or under him, or by, from or under the said (*deceased partner*) deceased, shall and will at any time, at the request and charges of the said (*surviving partner*), his executors or administrators, make, do and execute any further and other lawful and reasonable act and acts, thing and things, as well for the corroborating and strengthening of these presents, as also for the further, better, and more perfectly or satisfactorily assigning all and singular the said hereby assigned premises unto him the said (*surviving partner*), his executors, administrators and assigns, as by the counsel in the law of him or them shall be reasonably advised or required:

Further assurance.

Executor to pay debts owing by deceased partner, on copartnership account.

AND further, that in case it shall be proved or made plainly to appear, within the space of now next ensuing, that he the said (*deceased partner*) contracted any debt or debts on account of his said late copartnership with any person or persons whomsoever (other than and except such debts as are mentioned and comprised in the said rest book, signed by them the said (*executor*) and (*surviving partner*) as aforesaid), and that such debt or debts is or are now justly due and owing from the estate of the said (*deceased partner*), and are, or is or shall become chargeable upon the copartnership estate, then and in such case he the said (*executor*), his executors and administrators, shall and will, out of the estate of the said (*deceased partner*), pay and satisfy all and every such debt or debts as lastly aforesaid, or shall and will save harmless and keep indemnified the said (*surviving partner*), his executors and administrators, of and from payment thereof: AND he the said (*executor*), for the considerations aforesaid, for himself, his executors and administrators, and for all other the representatives of the said (*deceased partner*), doth hereby remise, release, discharge and for ever quit claim unto him the said (*surviving partner*), his executors, administrators and assigns, all sums of money and demands now due to the said late joint trade, and all and all manner of actions, suits, claims and demands

Executor releases surviving partner.

ASSIGNMENTS.

Stock in trade (copartnership).

whatsoever, both at law and in equity, which he or any of them can or may from henceforth claim, challenge or demand against him the said (*surviving partner*), his executors or administrators, for or by reason or on account of any breach or non-performance of any covenant or agreement, or any other act, matter or thing whatsoever done or committed, or which on his or their part, by virtue of the said indenture or articles of copartnership, or otherwise, are or were thereby covenanted or agreed to be paid, done and performed. AND he the said (*surviving partner*), in consideration of the release hereinbefore made and given to him as aforesaid, and for other good considerations him thereunto moving, doth hereby, for himself, his executors and administrators, remise, release, discharge, and for ever quit claim unto him the said (*executor*), and all and every other the representatives of the said (*deceased partner*), all and every sum and sums of money, and all and all manner of actions, suits, claims and demands whatsoever, both at law and in equity, which he, they, or any of them, can or may have, claim, challenge or demand against the estate late of the said (*deceased partner*), or him the said (*executor*) as executor thereof, for or by reason, or upon account of any breach of covenant or non-performance of any agreement, or any other act, matter or thing whatsoever by him or them done or committed, touching or relating to the herein before-mentioned copartnership, or which by the said articles or indentures of copartnership, or otherwise, are or were by him the said (*deceased partner*) thereby covenanted and agreed to be paid, done and performed (other than and except as to debts not comprised in the said rest), which shall appear to have been contracted, and which are now justly due from the estate of the said (*deceased partner*) to the said late joint trade, and which are to be paid by him the said (*executor*) as aforesaid. IN WITNESS, &c.

Surviving partner releases executor.

*** Common deed stamp.

Stamp.

ASSIGNMENTS.

Term to attend (purchaser).

No. CLII.

An Assignment of an outstanding [mortgage or other] satisfied Term, *to a Trustee, to attend the Inheritance of a* Purchaser(1).

Variations where a part only of the premises comprised in the term is sold. Where the term was created for the purpose of raising childrens' portions. Where to secure the payment of an Annuity.

THIS INDENTURE of parts, made the day of , in the year of the reign, &c. and in the year of our Lord 18 ,

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Use of assignment of terms to attend, and what terms to be assigned.

(1) It being a rule of law that when a greater estate unites with a less, the less estate shall be considered as extinguished or *merged*, as it is called, in the greater, it is usual where terms for years have been created out of the inheritance for any particular purpose, which has been satisfied, to continue them separated from the freehold by assigning them to some person in trust for the owner of the fee, in order that by means of the legal interest comprized in them, they may be used for the purpose of defeating (by priority) the title of any intermediate incumbrancer, i. e. any person claiming a charge upon the land subsequently to the creation of the term, and prior to the time of such assignment. But as the general doctrine of merger is subject to many nice distinctions, it is not always immediately obvious where there are several outstanding terms (which is frequently the case) which of them to select for that purpose. It may therefore be proper to give a general outline of the law of merger, so far as concerns estates for years carved out of the inheritance, together with some remarks tending to lead the student to a correct application of them in practice, which is the more necessary, on account of the contradictory authorities he will meet with upon the subject in the reports.

Term of years vesting in the freehold merges.

The first general rule respecting merger, is, that when a term for years becomes vested in the same person who is seised of the freehold, the term will merge in such freehold: Thus, if a lessee for years, after entry, (till when the term is not fully severed from the inheritance) or the assignee of a lessee for years surrender his lease to the reversioner of the same lands, the term will be extinguished; 2 Roll. Ab. 494; for the term being only a portion of, and separated from the inheritance, will

ASSIGNMENTS.

Term to attend (purchaser).

BETWEEN (*the termor*) of, &c. of the first part, (*the vendor*) of, &c. of the second part, (*the purchaser*) of, &c. of the third part, and (*the new trustee*) of, &c. a trustee named and appointed by and on the

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upon being returned to it, again become united and consolidated with it; in such case, therefore, any attempt to keep the term on foot by assignment would be absurd.

If vested in him as of the same right as the freehold. But not if he be trustee, &c. of the one, and beneficial owner of the other,

But the above rule does not universally hold, for it is further necessary, in order to a merger, that the term so vested in the owner of the freehold should have been vested in him, in one and the same right with the freehold; Co. Lit. 338. b.; and see 9 East, 372; for if he have the freehold in his own right, as beneficial owner, and a term for years in the same lands as trustee or executor; Gage v. Acton, 1 Com. 69; 1 Salk. 326. S. C. 1 Ld. Raym. 520; or in right of his wife; Co. Lit. 338 b.; Barcebridge v. Cokes, Plow. 417; the term will continue distinct from the inheritance, although united with the freehold in the same person, because in all these cases the freeholder is possessed of the term, not beneficially for himself, but for or in right of others; and in the case of a trustee or executor, a merger would defeat the ends for which the term was created, or the rights of creditors entitled to the benefit of it; and yet in other cases, except as against creditors, it should seem that a term of years vested in an executor, who afterwards acquired the fee by purchase or other voluntary act, the term will merge, for primâ facie (and also eventually after payment of debts) he is considered as entitled beneficially, and for his own use, to the chattel interests of his testator; see 1 Roll. Ab. 934. pl. 9; 4 Leon. 37. pl. 102; although otherwise, where the union arises by operation of law; 4 Bac. Ab. 211. But although, as has been before observed, where a man seised of the freehold marry a woman termor, the term will not merge; yet, according to Coke, if a husband termor marry a woman who at the time is seised of the freehold, this term will merge, because, he says, that although a man may have a freehold in his own right, and a term for years in right of another, yet he cannot have a term for years in his own right, and a freehold in right of another; Co. Lit. 338 b.; as, however, in either case the union arises equally by the voluntary act of the party, and not by act of law, this doctrine seems questionable, and is also contrary to subsequent determinations; for where a termor married a woman upon whom the fee afterwards descended, the term was holden not to merge; Platt v. Sleap, Cro. Jac. 275; and so where a lessee for years assigned his lease to the husband of a woman who had an estate of freehold in the same lands, the term continued; 2 Roll. Rep. 472; 1 Roll. Ab. 934. pl. 10; and yet in both these cases the termor is possessed of the term in his own right, and seised of the fee in right of another; but, as the decision in Cro. Jac. is said to have been dissented from by Williams, Just. and is contrary to the doctrine laid down by Coke (1 Inst. 218 b.), it may not be considered safe to dispense with a term so situated, unless where the husband have issue by the wife, when he being seised of a beneficial title in the inheritance, as tenant by the curtesy, there appears to be nothing to prevent a merger of the term. See 1 Bulst. 118. But if the husband possessing a term in right of his wife purchase the fee, the term, it should seem, will merge, notwithstanding some autho-

nor if the union arises by operation of law.

Nor it seems if freehold in his own right and term in right of another.

Husband termor purchasing the fee term merges.

ASSIGNMENTS.

Term to attend (purchaser).

part of the said (*purchaser*) for the purposes hereinafter expressed, of the fourth part. WHEREAS by an indenture bearing date the day of , which was in the year , and

Recital of creation of term.

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rities to the contrary (Young v. Radford, Hob. 3.); because this was his own voluntary act, and not, as in the case stated by Coke, the act of law. See Moor 51. pl. 157. And also, where the owner of the inheritance afterwards becomes entitled to a charge created upon it, and secured by a term vested in trustees, the charge will, unless in a case of creditors or infancy, become merged in equity; Donisthorpe v. Porter, Amb. 600.

Owner becoming entitled to rent charge secured by term, it merges.

It is farther necessary, in order to the merger of a term, that the owner of the freehold should have the same estate in both, i. e. that both the estates be legal, or both equitable; for if he have a legal estate in the one, and an equitable estate in the other, the term will not merge, although vested in the same person; Co. Lit. 290 b. n. (1). s. 13; Capel v. Girdler, 9 Ves. 509.

In order to merger, owner must have same estate in the term and inheritance.

The cases above put, it will be perceived, are all those where an estate of freehold, at the least, is in one person, and a term for years only in the other, and according to the old opinions they were the only cases in which the term could merge; see 4 Bac. Ab. 8vo. p. 211, and cases there cited; but it has been since holden, that one term of years may merge in another term of years if they be for different periods of duration; Hughes v. Robotham, Cro. Eliz. 302. Pop. 31; in which case the term of shorter continuance will merge in that which extends farther into the inheritance. Thus, if a term of 10 years become vested in the same person who has a term of 12 years (4 Bac. Ab. 8vo. 211.) in the same lands, and the 12 years term has a longer period to run than that of 10, the term of 10 years will merge; but if the term of 10 years will, from its being subsequently created, extend longer than the term of 12 years, the 12 years' term will then merge in that of 10 (and see Stephens v. Bridges, 6 Modd. 66. in which a term of 1000 years was held to merge in one of 500); and so if there be two leases of the same land, the one for 20 years, and the other for one year only, expectant upon, and to commence upon the expiration of the term of 20 years, and the lessee for 20 years were to accept of an assignment from the lessee for one year, this it is said (Bac. Ab. ubi sup. but see Co. Lit. 273. b.) would work a surrender of the 20 years' term, in like manner as if the lessee had taken a new lease for one year of his lessor, for it is not necessary that the merging term should be the longest, but only that it should be reversionary in relation to the term merged; and in the words of Ch. Bar. Gilbert, "the reversionary interest coming to the possession drowns it;" and as a person may surrender to him who has the reversion in fee, so he may to any one who has the reversion for any longer term; and so if a term of 900 years be carved out of a term of 1000, the 900 may be surrendered to, and will merge in the term of 1000, although the term of 1000 years can never merge in that of 900; but this is not because the term of 1000 years is longer than that of 900, but because the remoter term never merges in that which is present and immediate, but the immediate term in that which is more remote.

A less term will merge in one of longer duration.

In case of two terms the one carved out of the other, the present merges in the reversionary term.

Another exception to the rule of merger, by the union of the term

ASSIGNMENTS.

Term to attend (purchaser),

made, or expressed to be made between (1) (*the mortgagor*) therein described, of the one part, and (*the mortgagee*) therein also described,

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with the freehold, is occasioned by the statute of uses (27 Hen. 8. c. 10.) in which, after enacting "that where any person or persons shall be seised of any lands, &c. to the use, confidence, or trust of any other person or persons by any means whatsoever, every such person and persons shall from thenceforth be adjudged in lawful possession of the same lands, &c." (which seisin of the freehold, by virtue of the act, would of course merge a term for years which the person so seised might at the time have in the same lands) there is contained a "saving to all those persons and their heirs, who might thereafter be seised to any use, all such *former* right, title, entry, *interest*, possession, rents, customs, securities, and actions as they or any of them might have had to his or their own proper use in or to any manors, lands, tenements, rents, or hereditaments whereof they might be seised to any other use." And as this clause includes an estate for years equally with other estates and interests, it follows, that a term which a person has in his own right, will not be merged by his taking a conveyance of the inheritance to any other use than to himself in fee; 7 Co. 19. b.; Ferrers v. Termor, Cro. Jac. 643.

But no merger termor in his own right purchasing inheritance, except, &c.

But it is to be observed, that although a term be merged at law, it will nevertheless be upholden, or rather restored in equity, where it is necessary for the object of the term, that it should be kept on foot; see Saunders v. Bounford, Finch Rep. 424.; Powell v. Morgan, 2 Vern. 90.; Thomas v. Kemeys, ib. 348.; Lawrence v. Blatchford, ib. 457.; Hopkins v. Hopkins, 1 Atk. 592.

Term merged at law may be restored in equity.

These points on the law of merger lead to a consideration of the modes to be adopted to prevent the merger of such terms as it may be wished to keep on foot, and it will be properly concluded from the uncertainty which it is perceived prevails in many cases, as to when a term is merged, and when it is still subsisting, that a term should seldom be left in its former situation, but be either surrendered, or assigned to attend, according to the circumstances of the case.—And see *ante*, MOD. PREC. Vol. I. p. 430; and as to merger by *Presumption*, see Emery v. Grocare, 6 Mod. 64.

Where there is but one term outstanding, as supposed in the precedent given above, all that is necessary to keep it on foot is to vest it by assignment in some third person, accompanied by a declaration of trust that it shall attend the inheritance; but where there are more terms than one, such modes may be adopted as are noticed in the notes to the next subsequent precedent, No. CLIII.

(1) If the term were created for securing the payment of an annuity, say, Annuity.

"WHEREAS by an indenture bearing date the day of , which was in the year , and made or expressed to be made between (*the grantor*) of, &c. of the first part, (*the grantee*) of, &c. of the second part, and (*the grantee's trustee*) of, &c of the third part, the said (*grantor*), for the considerations

ASSIGNMENTS.

Term to attend (purchaser).

of the other part, the said (*mortgagor*), in consideration of the sum of £ , then advanced to him by the said (*mortgagee*), by

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therein mentioned, granted and demised, ALL, &c. TO HOLD the same, with the appurtenances, unto the said (*grantee's trustee*) from the date thereof for the term of years, for securing the payment of an annuity, or yearly sum of £ , during the life of the said (*grantor*). AND WHEREAS the said (*grantor*) hath since departed this life, and all arrears of the said annuity have been fully paid and satisfied."

Children's portions.

If the term were created for the purpose of raising younger children's portions under a marriage settlement, say,

"WHEREAS by indentures of lease and release, bearing date respectively the and days of , which was in the year , the release being of parts, and made or expressed to be made between, &c. and purporting to be a settlement made in contemplation of a marriage then intended, and which was afterwards solemnized between the said (*husband*) and the said (*wife*), the messuages, lands, tenements, and hereditaments hereinafter described, were (amongst others) limited, from and after the decease of the said (*husband*) [*or as the case may be*], to the use of the said (*termors*), their executors, administrators, and assigns, for the term of 1000 years, UPON TRUST, by the ways and means therein mentioned, to raise the sum of £ , for the portions of the daughters and younger sons (if any) of the said then intended marriage, with remainder to the use of the said younger sons of the (*husband*) by the said (*wife*) in tail male. And in the said indenture of release there is contained a proviso, that from and after the trusts of the said term should be fully satisfied, or the hereditaments comprised therein should be discharged therefrom by the same becoming incapable of taking effect, or otherwise, the said (*termors*) should stand possessed of, and interested in the said term, IN TRUST for the said (*husband*), his heirs and assigns, and to assign and dispose of the same as he or they shall for that purpose direct. AND WHEREAS the said (*husband*) hath departed this life. AND WHEREAS the trusts of the said term have long since been fully performed, or otherwise fully satisfied. AND WHEREAS under or by virtue of the limitations in the said recited indenture of settlement contained, and subsequent assurances and acts in the law, the said (*vendor*) is now seised of the fee-simple and inheritance of the said premises, free from incumbrances."

ASSIGNMENTS.

Term to attend (purchaser).

way of loan and at interest, granted and demised unto the said (*mortgagor*), ALL, &c. (1) TO HOLD the same, with the appurtenances, unto the said (*mortgagee*), his executors, administrators, and assigns, from the date thereof, for the term of years, by way of mortgage, for securing the said sum of £ and interest, in the manner therein expressed. AND WHEREAS the said sum of £ , and all interest due in respect thereof, have long since been fully paid and satisfied. AND WHEREAS by divers mesne assignments, and other acts in the law, and particularly by a certain indenture of three parts, bearing date on or about the day of , which was in the year , and made or expressed to be made between , of the first part, the said (*vendor*) of the second part, and the said (*termor*) of the third part, the said premises were assigned to the said (*termor*) for the residue of the said term, in trust to attend the inheritance of the same premises (then conveyed to the use of the said (*vendor*) and his heirs) (2). AND WHEREAS the said (*purchaser*) hath lately contracted with the said (*vendor*) for the absolute purchase of the said hereditaments (3) [at the sum of £]; and by indentures of lease and release already prepared and engrossed, the lease bearing or intended to bear date the day next before the day of the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*vendor*) of the one part, and the said (*purchaser*) of the other part, the fee-simple and inheritance of the said premises

Satisfaction of mortgage.

Assignment to termor.

Contract for purchase.

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(1) Insert here a particular description of the premises, unless a part of them only are sold to the present purchaser, in which case it will be better to refer to a description of them in the operative part of the deed, as,

Parcels.

"Amongst other hereditaments therein mentioned, the several messuages (*or as the case may be*) hereinafter particularly described."

And see *post*. p. 546, n. (2).

(2) If the term be standing far back, recite the title of the inheritance to the present vendor, as

"AND WHEREAS by indenture of, &c. bearing date, &c. and made, &c. the fee-simple and inheritance of the said premises were conveyed to the use of A. B. and his heirs. AND WHEREAS the said A. B. by his last will, &c. devised the same unto the (*present vendor*) and his heirs." (*or as the case may be*).

(3) If part only of the premises comprised in the term be sold, say,

Part of premises sold.

"For the absolute purchase of such parts of the aforesaid messuages, lands, and hereditaments as are hereinafter described."

ASSIGNMENTS.

Term to attend (purchaser).

have been conveyed and assured to the use of the said (*purchaser*) and his heirs. AND WHEREAS the said (*purchaser*) hath requested that the now residue of the said term may be assigned to the said (*trustee*) upon the trusts and for the purposes hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said request [*and in consideration of the sum of 10*s.* of lawful current money of Great Britain, to the said (*termor*), in hand well and truly paid by the said (*trustee*), at the time of sealing and delivery of these presents, the receipt whereof is hereby acknowledged],

WITNESS. That in consideration, &c.

The termor assigns,

HE the said (*termor*), at the request, and by the direction of the said (*vendor*) [and at the nomination of the said (*purchaser*)], testified by their severally being parties to these presents, HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over;

and the vendor confirms,

AND the said (*vendor*), at the request and nomination of the said (*purchaser*) testified in like manner as aforesaid, and for the considerations mentioned in the said in part recited indenture of release HATH bargained, sold, assigned, ratified, and confirmed (1), and by these presents], DOTH bargain, sell, assign, ratify, and confirm unto the said (*trustee*), his executors, administrators, and assigns,

Parcels.

ALL (2) those the said several messuages, lands, tenements, hereditaments, and all and singular other the premises comprised in, and expressed to be assigned to the said (*termor*) by the said in part recited indenture of assignment, of the day of , as hereinbefore is mentioned (being the same messuages and hereditaments as are expressed to be granted and released, to the use of the

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Brevity.

* If brevity be particularly desired, the parts of the precedent within brackets may be omitted.

Intent of making the vendor join.

(1) The intent of making the freeholder join in granting and confirming the term, is to renovate or re-create the term, should it by any means have become void; see Denn dem. Wilkins v. Kemeys, 9 East, 366.; but the use of this is very problematical when the assignment of the term is made to attend, as the purpose of the old term is to protect the inheritance against mesne incumbrances, which cannot be effected by the creation of a term *de novo*.

Part of premises sold.

(2) If part only of the premises comprised in the term be sold, insert a full description of them here, adding,

"And which said messuages, lands, tenements, and hereditaments are part and parcel of the messuages, lands, tenements, and hereditaments comprised in, and expressed to be demised by the hereinbefore in part recited indenture of mortgage of, &c. and being the same messuages, &c." *as above,*

ASSIGNMENTS.

Term to attend (purchaser).

said (*purchaser*) and his heirs, by the said indenture of lease and release hereinbefore mentioned to bear even date herewith), and to and with all and every the appurtenances to the said hereditaments belonging; AND all the estate, right, title, interest, term or number of years now to come and unexpired, trust, property, possession, claim and demand whatsoever, both at law and in equity, of him the said (*termor*), of, in, to, or respecting the same hereditaments and premises, and every part thereof, under or by virtue of the said indenture of assignment. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and [all and singular other the] premises [hereby assigned, or otherwise assured, or intended so to be, with their respective appurtenances], unto the said (*trustee*), his executors, administrators, and assigns, from henceforth, for and during all the residue or remainder which is or may be yet to come and unexpired of or in the said term of years [in and by the said hereinbefore in part recited indenture of the day of , expressed to be demised to the said (*mortgagee*) as aforesaid], BUT IN TRUST nevertheless for the said (*purchaser*), his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint concerning the same respectively, and in the mean time, IN TRUST and to the intent that the residue, for the time being, of the said term and estate hereby expressed or intended to be assigned, shall and may attend and wait upon the reversion and inheritance of the (1) hereditaments and premises hereby assigned (2), (for the sole use and benefit of the

To hold to the trustee for the residue of the term.

Upon trust to attend the inheritance.

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(1) If part only of the premises comprised in the term be sold, say, "The reversion and inheritance of such part and parts of the lands, tenements, and hereditaments as in and by the said hereinbefore in part recited indenture of release of even date herewith, is or are thereby expressed or intended to be granted and released, or otherwise assured."

Part of premises sold.

(2) If the conveyance of the inheritance was to uses, &c. instead of the words with brackets, say:

"In trust and to the end and intent that the said term and estate shall and may attend upon the reversion and inheritance of the hereditaments hereby assigned, in order to protect, &c. *as above*, and to be from time to time subservient in all things to the uses, trusts, intents, and purposes declared or expressed concerning the messuages, &c. in or by the said hereinbefore in part recited indenture mentioned to bear even date herewith."

Uses.

ASSIGNMENTS.

Term to attend (purchaser).

said (*purchaser*) and his heirs,) in order to protect and defend the same from and against all subsequent and intermediate encumbrances, if any such there be [and IN TRUST, that he the said (*trustee*), his executors, administrators, and assigns, shall and do permit and cause the said term and estate to be used and disposed of for that purpose accordingly]. AND the said (*termor*), for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said (*trustee*), his executors, administrators, and assigns, and also with and to the said (*purchaser*), his heirs and assigns, in the manner following, (that is to say,) that he the said (*termor*) hath not at any time or times heretofore, made, done, executed, committed, or knowingly omitted or suffered, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof the messuages, lands, tenements, hereditaments, and premises hereby assigned, or intended so to be, or any part or parcel thereof, or any estate or interest therein, are, is, can, shall, or may be in anywise impeached, charged, encumbered, or prejudicially affected [in title, estate, or otherwise howsoever, or whereby the said in part recited indenture of demise, or any assignment thereof, or the said term of years, or any part or residue thereof has been, or is, or can, shall, or may be surrendered, merged, extinguished, forfeited, or in any other manner become void or voidable]. IN WITNESS, &c.

Covenant by termor that he has done no act to encumber.

ASSIGNMENTS.

Several terms to attend (purchaser).

No. CLIII.

An Assignment of several outstanding satisfied [Mortgage or other] Terms (1), *to several Trustees for a* Purchaser.

Variations where they are all assigned to one Trustee. Where to attend the Inheritance of a Mortgagee. Where part only of the premises comprised in the terms is sold.

THIS INDENTURE of parts, made the day of , in the year of the reign, &c. and in the year of our Lord 18 .

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(1) It being now holden, as has been before observed (see *ante*, p. 542 in notes) that terms for years will merge in each other, a difficulty sometimes arises in respect of outstanding terms resident in several trustees. For if all the terms be taken to one trustee, those which have the shorter will merge in that which has the longer residue to come; and if they be assigned to different trustees, much inconvenience may arise in procuring assignments of them at a future period. There are two expedients adopted to avoid these objections: the one is to *assign* to a trustee the longest term, and to grant *underleases* of the other terms to the same trustee for periods equal to the whole residue, except one day, or (which is the same thing) to assign the whole of the terms, with the *exception* of one day as to the shorter ones, in which case the reversionary period of a day subsisting in the original termors will prevent the terms from merging in each other. But in these cases care must be taken that the demised or shorter terms be expressly declared to be attendant upon the inheritance, as they might otherwise be considered as independent or insulated estates; see Scott v. Fenhoulett, 1 Brow. Ch. Ca. 69. As this mode, however, of carving out underleases from the original terms necessarily leaves a small portion of the legal estate still outstanding in the former trustees, and is therefore an incomplete transfer to the new trustees, it is sometimes made the subject of objection by an unwilling purchaser, although it is scarcely possible to conceive any detriment which can result from it. But the objection may be obviated by having two trustees, and assigning to each of them two or more of the terms in alternate succession; *i. e.* the first term to one of them, the second to the other, the third to the first, and so on, by which means they will be kept separate from, and therefore prevented from merging into each other, and being transmissions of the whole estate from the original termors, are not liable to the objections which might be made to the other mode.

Modes of assignment of several terms, to prevent their merging in each other.

ASSIGNMENTS.
Several terms to attend (purchaser).

BETWEEN (*the first termor*) of, &c. of the first part, (*the second termor*) of, &c. of the second part (1), (*the vendor*) of, &c. of the third part, (*the purchaser*) of, &c. of the fourth part, (*the first trustee*) (2) of, &c., a trustee named and appointed by and on the part of the said (*purchaser*) for the purposes hereinafter mentioned, of the fifth part, and (*the second trustee*) of, &c. a trustee also named and appointed by and on the part of the said (*purchaser*) for the purposes hereinafter mentioned, of the sixth part. WHEREAS, &c. (3) AND WHEREAS, &c. (4) AND WHEREAS on the treaty for the said purchase it was agreed, that the then residue of the said several terms of years of and in the said lands and hereditaments (5) should be assigned to or for the benefit of the said (*purchaser*) in such manner as he should direct. AND WHEREAS the said (*purchaser*) hath requested that the same several terms may be assigned to the said (*trustees*) respectively, in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the hereinbefore mentioned agreement [* and in consideration of the sum of 10*s.* of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*first termor*) in hand well and truly paid by the said (*first trustee*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], HE the said (*first termor*), at the request and by the direction of the said (*vendor*), and at the nomination of the said (*purchaser*), testified by their severally being parties to these presents HATH bargained, sold,

Recital of agreement for assignment of terms.

WITNESS. That in consideration, &c.

the first termor assigns

Two or more terms.

(1) If there be more than two outstanding terms, make the several termors parties of the third, fourth and fifth parts, &c. the vendor of the next, and the trustees (whose number need not in any case exceed two) of the last part.

Underleases.

(2) If, instead of assigning the several terms to the two trustees alternately, as in the form adopted above, the other mode of creating underleases be preferred, one trustee only will be necessary.

Recitals.

(3) Recite here the deeds creating the several terms, and also those assigning them to the different trustees: the form of these recitals will be found, *ante*, No. CLIII. p. 542, et seq.

Contract for purchase.

(4) Recite here the contract for the purchase of the inheritance, and the conveyance of it to the purchaser in the usual mode.

Inheritance of mortgagee.

If the terms be assigned to attend the inheritance of a mortgagee, recite the mortgage as *ante*, p. 545.

Part of premises sold.

(5) If part only of the premises comprised in the term be sold to the present purchaser, see *ante*, p. 545. n. (3).

Brevity.

* The parts of the precedent within brackets may be omitted, if brevity be particularly desired.

ASSIGNMENTS.

Several terms to attend (purchaser).

assigned, transferred and set over, and by these presents] DOTH bargain, sell, assign, transfer and set over; AND the said (*vendor*) for the considerations mentioned in the said hereinafter in part recited indenture of release HATH granted, bargained, sold, assigned, ratified and confirmed, and by these presents DOTH grant, bargain, sell, assign, ratify and confirm unto the said (*first trustee*), his executors, administrators and assigns, ALL those the said several messuages, lands, tenements and hereditaments, and all and singular other the premises comprised in and expressed to be demised by the first hereinbefore in part recited indenture of the day of , and afterwards assigned unto and vested in the said (*first termor*) by the hereinbefore in part recited indenture of assignment of the day of , as hereinbefore is mentioned (1); and all the estate, right, title, interest, term or number of years now to come and unexpired, trust, property, possession, claim and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said (*first termor*), of, in, to or respecting the same messuages, lands, tenements, hereditaments and premises, and every or any part thereof; together with the said several hereinbefore in part recited indentures of demise and assignment, and all benefit and advantage incident or belonging to the same, or either of them, or to the covenants and assignments thercin respectively contained. TO HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments and [all and singular other the] premises [hereby assigned, or otherwise assured, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances], unto the said (*first trustee*), his executors, administrators and assigns, from henceforth, for and during all the residue or remainder (3) which is

the premises comprised in the first term.

To hold to the first trustee for the residue of the term,

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(1) If part only of the premises comprised in the term be sold to the present purchaser, see *ante*, p. 546. n. (2). Part of premises sold.

(2) If the assignment be wished to be as concise as possible, all the terms may assign to the trustee TO HOLD the said premises for the residue of the said term, *except one* day, and for the *whole* of the residue of the second term. Brevity.

(3) It has been before observed that the merger of the terms may be prevented by leaving a small portion of each term in the original termor, in which case, say, Assignment to one trustee.

"For and during all the residue and remainder which is or may be yet to come and unexpired of or in the said term of years, n and by the said hereinbefore in part recited indenture of the lay of expressed to be demised as aforesaid, save and except nly the last day thereof."

ASSIGNMENTS.

Several terms to attend (purchaser).

upon trusts hereinafter declared.

FURTHER. WITNESS. That in consideration, &c.

The second termor assigns

the premises comprised in the second term.

To hold to the second trustee for the residue of the term,

or may be yet to come and unexpired of or in the said term of years [in and by the said hereinbefore in part recited indenture of the day of expressed to be demised as aforesaid], but UPON THE TRUSTS nevertheless, and for the ends, intents and purposes hereinafter declared or expressed concerning the same. AND THIS INDENTURE WITNESSETH, that in further pursuance of the hereinbefore mentioned agreement, [and also for and in consideration of the sum of 10*s.* of like lawful and current money at the time aforesaid to the said (*second termor*) in hand well and truly paid by the said (*second trustee*), the receipt whereof is hereby also acknowledged] HE the said (*second termor*), at and by the like request, direction and nomination, and so testified as hereinbefore is mentioned, HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over; and the said (*vendor*) for the considerations hereinbefore mentioned HATH granted, bargained, sold, assigned, ratified and confirmed, and by these presents DOTH grant, bargain, sell, assign, ratify and confirm unto the said (*second trustee*), his executors, administrators and assigns, ALL those (1) the said several messuages, lands, tenements and hereditaments hereinbefore, and in the said in part recited indenture of demise of the day of described, or mentioned or intended so to be, with their and every of their appurtenances; and all the estate, right, title, interest, term or number of years now to come and unexpired, trust, property, possession, claim and demand whatsoever, both at law and in equity, of him the said (*second termor*), of, in, to or respecting the same messuages, lands, tenements, hereditaments and premises, and every or any part thereof; together also with the said several hereinbefore in part recited indentures of demise and assignment, and all benefit and advantage incident or belonging to the same, or any part thereof. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments and [all and singular other the] premises [hereby assigned, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances], unto the said (*second trustee*), his executors, administrators and assigns, for and during all the residue and remainder which is or may be yet to come and unexpired of and in the said term of years [in and by the said hereinbefore in part recited indenture of the day of

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Part of premises sold.

(1) If part only of the premises comprised in the term be sold, see *ante*, p. 546. n. (2).

ASSIGNMENTS.

Several terms to attend (purchaser).

expressed to be demised as aforesaid], BUT UPON THE TRUSTS nevertheless, and for the ends, intents and purposes hereinafter declared or expressed concerning the same (1). AND WHEREAS the messuages, lands, tenements and hereditaments comprised in the said hereinbefore in part recited terms of years and years are the same messuages, lands, tenements and hereditaments as are comprised in the hereinbefore in part recited indenture of release of even date herewith. NOW IT IS HEREBY DECLARED and agreed by and between the said parties hereto, and the true intent and meaning of them and of these presents is, that the said (*trustees*) respectively, and their respective executors, administrators and assigns, shall stand possessed of and interested in the several messuages, lands, tenements and hereditaments so assigned to them respectively, as hereinbefore is mentioned, for the residue of the several terms of years which is or may be yet to come and unexpired in the said premises, UPON TRUST (2) nevertheless for the said (*purchaser*), his heirs and assigns, and to be respectively assigned and disposed of, from time to time, as he or they shall direct or appoint concerning the same, or any part thereof; and in the mean time, and until such assignment, disposition, direction or appointment which shall be made, and when made, then subject thereto, IN TRUST, and to the intent that the residue, for the time being, of the said several terms and estates hereby expressed or intended so to be assigned, shall and

upon trusts after declared.

Declaration that the several trustees shall stand possessed of the premises.

In trust for the purchaser.

And to attend and inheritance.

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(1) If there be more than two terms assigned by the same instrument, the third term must be assigned to the first trustee, and the fourth term to the second trustee, and so on until the whole number of terms outstanding shall have been assigned; in order that, as has been before observed, there may be a term intervening between the estate of each trustee, and the terms by that means prevented from merging: the form of these assignments will be precisely similar to that above given.

Three or more terms assigned.

(2) If the terms be assigned to attend the inheritance of a mortgagee, say,

Inheritance of mortgagee.

"UPON TRUST nevertheless for the said (*mortgagee*), his heirs, executors, administrators and assigns, for the better securing to him or them the repayment of the said sum of £ and interest, according to the purport, and the true intent and meaning of the said in part recited indenture of mortgage of even date herewith, and from time to time to be used and disposed of for that purpose as occasion may require; and from and after the payment and satisfaction thereof, and in the mean time subject thereto, IN TRUST for the said (*mortgagor*), his heirs and assigns, and to be respectively assigned, &c." *as above.*

ASSIGNMENTS.

Several terms to attend (purchaser).

may attend and wait upon the reversion and inheritance of the lands (1), tenements, hereditaments and premises therein comprised, for the sole use and benefit of the said (*purchaser*), his heirs and assigns, in order to protect and defend the said messuages, lands, tenements and hereditaments from and against all subsequent and intermediate encumbrances, if any such there be, [and in trust that they the said (*trustees*) respectively, and their respective executors, administrators and assigns, shall and do permit, and cause the said several terms and estates to be respectively used and disposed of accordingly]. [*Add a separate covenant on the part of each termor, that he has not encumbered* (2)]. IN WITNESS, &c.

Covenants to be inserted.

Part of premises sold.

(1) If part only of the premises comprised in the terms be sold to the present purchaser, see *ante*, p. 547. n. (1).

(2) The form of each of these covenants will be similar to that given *ante*, p. 548.

ASSIGNMENTS.

Term to attend (several purchasers).

No. CLIV.

An Assignment of an outstanding satisfied Mortgage Term, *by the Termor, to a Trustee for several* Purchasers *of different parts of the Estate.*

THIS INDENTURE of parts, made the day of [* in the year of the reign, &c. and] in the year of our Lord 18 , BETWEEN (*the termor*) of, &c. of the first part, (*the vendor*) of, &c. of the second part, A. B. (*one of the purchasers*) of, &c. of the third part, C. D. (*another purchaser*) of, &c. of the fourth part, and (*the trustee*) of, &c., a trustee named and appointed by and on the behalf of the said (*purchasers*) respectively, of the fifth part. WHEREAS, &c. (1), AND WHEREAS the several messuages or tenements, lands and hereditaments comprised in the hereinbefore in part recited indenture of the day of were put up to sale by public auction on the day of last, in lots. AND WHEREAS the said (*purchasers*) became the purchasers at the said sale of different parts of the said premises; and by several indentures of lease and release already prepared and engrossed, the leases bearing date the day next before the date of the releases, and the releases bearing or intended to bear even date with these presents, such parts of the said messuages, lands, tenements, and hereditaments as were so purchased by the said (*purchasers*) respectively have been or are intended to be this day conveyed and assured to them and their heirs respectively. AND WHEREAS it hath been agreed by and between the said (*purchasers*) and the said (*vendor*) that the now residue of the said term of

Parties.

Recital of sale by auction.

Of conveyances to purchasers of even date.

Agreement for assignment of term.

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* If brevity be particularly desired, the parts of the precedent within brackets may be omitted. Brevity.

(1) Recite here the deed creating the term, and its assignment to the present termor, as *ante*, p. 542. Recitals.

ASSIGNMENTS.

Term to attend (several purchasers).

years of and in the premises comprised in the hereinbefore in part recited indenture of the day of shall be assigned to the said (*trustee*), in trust to attend the inheritance of them the said (*purchasers*) respectively, of and in such parts of the said hereditaments as have been so by them respectively purchased, in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH,

WITNESS. That in consideration, &c.

that in pursuance and performance of the hereinbefore mentioned agreement, [* and in consideration of the sum of 10*s.* of lawful money of England, to the said (*termor*) in hand paid by the said (*trustee*), at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged]

the termor assigns

HE the said (*termor*), at the request, and by the direction of the said (*vendor*), and at the nomination of the said (*purchasers*), testified by their severally being parties to these presents, HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over; AND the said (*vendor*), for the considerations mentioned in the several hereinbefore in part recited indentures of release, HATH granted, bargained, sold, assigned, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, assign, ratify, and confirm unto the said (*trustee*), his executors, administrators, and assigns, ALL those the said several messuages, lands, tenements, hereditaments, and all and singular other the premises comprised in, and expressed to be demised by the hereinbefore in part recited indenture of mortgage of the day of , and afterwards assigned unto the said (*termor*) by his said in part recited indenture of assignment, as hereinbefore is mentioned; and which said messuages, lands, tenements, and hereditaments are the same messuages, lands, tenements, and hereditaments as in and by the said several hereinbefore in part recited indentures of release, of even date herewith, are granted and released, or otherwise assured, or mentioned or intended so to be, unto or for the said (*purchasers*) respectively, and their respective heirs or assigns, in the manner therein mentioned; and all the estate, right, title, interest, term and terms of years yet to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said (*termor*), of, in, to, or respecting the same messuages, lands, tenements, hereditaments, and premises, and every or any part thereof, together with the said several hereinbefore in part recited indentures of demise and assignment, and all benefit and advantage incident or belonging to the same, or either of them, or to the covenants and agreements therein respectively contained. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments

Parcels.

To hold to the trustee for the residue of the term.

ASSIGNMENTS.

Term to attend (several purchasers).

ments, and [all and singular other the] premises [hereby assigned or otherwise assured, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances] unto the said (*trustee*), his executors, administrators, and assigns, from henceforth, for and during all the residue or remainder which is or may be yet to come and unexpired of or in the said term of years [in and by the said hereinbefore in part recited indenture of the day of expressed to be demised to the said (*mortgagee*) as aforesaid]; but nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter expressed of or concerning the same, (that is to say) as to and concerning ALL, &c. (*the premises purchased by A. B.*) being the messuages, lands, tenements, and hereditaments so purchased by and conveyed to the said A. B. as hereinbefore is mentioned, IN TRUST for the said A. B., his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint concerning the same or any part thereof, and in the mean time, and until such assignment, disposition, direction, or appointment which shall be made, and when made then subject thereto, IN TRUST, and to the intent that the residue for the time being of the said term and estate hereby expressed, or intended to be assigned shall and may attend and wait upon the reversion and inheritance of the lands, tenements, hereditaments, and premises so purchased by him the said A. B. for the sole use and benefit of him the said A. B., his heirs and assigns, in order to protect and defend the same from and against all subsequent and intermediate encumbrances, if any such there be [and IN TRUST that he the said (*trustee*), his executors, administrators, and assigns, shall and do permit and cause the said term and estate to be used and disposed of for that purpose accordingly]; and as to and concerning ALL, &c. (*the premises purchased by C. D.*) being the messuages, lands, tenements, and hereditaments so purchased by and conveyed to the said C. D. as hereinbefore is mentioned, IN TRUST for the said C. D. his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint concerning the same or any part thereof, and in the mean time and until such assignment, disposition, direction, or appointment shall be made, and when made then subject thereto, IN TRUST, and to the intent that the residue for the time being of the said term and estate hereby expressed or intended to be assigned shall and may attend and wait upon the reversion and inheritance of the lands, tenements, hereditaments, and premises so purchased by him the said C. D. for the sole use and benefit of him the said C. D., his heirs and assigns, in order to protect and defend the same from

ASSIGNMENTS.

Term to attend (several purchasers).

and against all subsequent and intermediate encumbrances, if any such there be [and IN TRUST that he the said (*trustee*), his executors, administrators and assigns, shall and do permit and cause the said term and estate to be used and disposed of for that purpose accordingly]. (*Add a covenant by the termor that he has not done any act to incumber* (1).) IN WITNESS, &c.

Covenant to be inserted.

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(1) See the form of this covenant, *ante*, p. 548.

Mortgage term to attend (purchaser).

No. CLV.

An Assignment of a Mortgage Term *by the Mortgagee, to a Trustee for a* Purchaser (1).

THIS INDENTURE of parts, made the day of [* in the year of the reign, &c. and] in the year of our Lord 18 . BETWEEN (*the mortgagee or termor*) of, &c. of the first part, (*the mortgagor*) of, &c. of the second part, (*the purchaser*) of, &c. of the third part, and (*the trustée*) of, &c. a trustee named and appointed by and on the behalf of the said (*purchaser*), for the purposes hereinafter mentioned, of the fourth part. WHEREAS by an indenture bearing date on or about the day of , which was in the year , and made or expressed to be made between the said (*vendor*) of the one part, and the said (*mortgagee*) of the other part, the said (*vendor*), in consideration of the sum of £ then advanced to him by the said (*mortgagee*) by way of loan, granted and demised unto the said (*mortgagee*) ALL, &c. (2) TO HOLD the same with their appurtenances unto the said (*mortgagee*), his executors, administrators and assigns, from the day next before the date of the said indenture, for the term of

Parties.

Recital of mortgage.

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(1) It is sometimes the practice, where the mortgage is paid off out of the purchase money, and the estate is of small value, to insert the reconveyance of the mortgaged premises in the purchase deed (see *ante*, MOD. PREC. Vol. I. No. XXVII. p. 401. where the form of a deed of this description is given); but as this may frequently produce much inconvenience unto the purchaser by preventing him from maintaining an action of ejectment without the concurrence of his trustee (see *ibid.* n. (1)), the term should be assigned by a separate instrument, as in the form given above.

Term should be assigned by separate instrument.

* If brevity be particularly desired, the words within brackets may be omitted throughout the precedent.

Brevity.

Where the assignment is by the mortgagee to a trustee for the mortgagor, upon the mortgage debt being repaid, see *post.* Vol. III. "RE-ASSIGNMENT."

(2) Insert here a description of the premises from the mortgage deed.

Parcels.

ASSIGNMENTS.

Mortgage term to attend (purchaser).

years to be thence next ensuing, under and subject nevertheless to a proviso and agreement therein contained, that if the said (*vendor*), his heirs, executors, or administrators, should pay, or cause to be paid to the said (*mortgagee*), his executors, administrators or assigns, the said sum of £ , with interest on a day therein mentioned, and since passed, he the said (*mortgagee*), his executors, administrators and assigns, would, upon the request and at the expense of the said (*vendor*), his heirs, executors, administrators or assigns, re-convey the said messuages, lands and hereditaments, for all the residue which should be then to come of the said term unto the said (*vendor*), his executors, administrators and assigns, or unto such other person or persons, upon such trusts, and for such intents and purposes as he or they should direct in that behalf. AND WHEREAS default was made in payment of the said sum of £ at the time in the said proviso mentioned for payment thereof, whereby the estate and interest of the said (*mortgagee*), in the said hereditaments and premises become absolute at law, but nevertheless redeemable in equity on payment of the said sum of £ and interest. AND WHEREAS an account hath this day been made up between the said (*mortgagee*) and (*vendor*), and there appears to be due to the said (*mortgagee*), in respect of the said mortgage, the sum of £ for principal and interest up to the date of these presents. AND WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*) for the absolute purchase of the reversion and inheritance of the said lands and hereditaments at the sum of £ , free from encumbrances; and by indentures of lease and release already prepared and engrossed, the lease bearing or intended to bear date the day next before the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*vendor*), of the one part, and the said (*purchaser*), of the other part (*or as the case may be*), the same messuages, lands, tenements and hereditaments have been, or are intended to be conveyed and assured unto and to the use of the said (*purchaser*) and his heirs. AND WHEREAS it hath been agreed by and between the said (*vendor*) and (*purchaser*) that the said sum of £ so due to the said (*mortgagee*) as aforesaid, shall be paid off out of the purchase money, and that the residue of the said term of years shall be assigned unto the said (*trustee*), in trust to attend the inheritance of the said premises for the said (*purchaser*) and his heirs, in the manner hereinafter mentioned; and the said (*mortgagee*), at the request of the said (*vendor*), hath agreed to make an assignment thereof accordingly. NOW THIS INDENTURE

And default of payment.

Of account made.

Contract for purchase.

Agreement for assignment of term.

ASSIGNMENTS.

Mortgage term to attend (purchaser).

WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland to the said (*mortgagee*), in hand well and truly paid by the said (*purchaser*) at or before the sealing and delivery of these presents, at the request and by the direction, and for and on behalf of the said (*vendor*), testified by his being a party to, and sealing and delivering these presents, the receipt of which said sum of £ , and that the same is in full payment and satisfaction of all principal, interest and other monies due upon or in respect of the said hereinbefore in part recited mortgage security, he the said (*mortgagee*) doth hereby acknowledge [and of and from the same, and every part thereof, doth acquit, release, exonerate and for ever discharge the said (*vendor*) and (*purchaser*), and each of them, and their respective heirs, executors and administrators, and also the said messuages, lands and premises, as well by these presents as by the receipt or acknowledgment for the same sum hereupon indorsed], (and which said sum of £ is the same sum of £ as is expressed to be a part of the consideration-money of or in the said indenture of release hereinbefore referred to and mentioned, or intended to bear even date herewith), [and also for and in consideration of the sum of 10*s.* of like lawful and current money to the said (*mortgagee*) in hand at the same time paid by the said (*trustee*), the receipt whereof is hereby acknowledged], HE the said (*mortgagee*), at the request and by the direction and appointment of the said (*vendor*), testified as hereinbefore is mentioned, HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over; and the said (*vendor*), for the considerations mentioned in the said hereinbefore in part recited indenture of release HATH granted, bargained, sold, assigned, transferred, ratified and confirmed, and by these presents DOTH grant, bargain, sell, assign, transfer, ratify and confirm unto the said (*trustee*), his executors, administrators and assigns, ALL those the several messuages, lands, tenements and hereditaments, and all and singular other the premises comprised in the said hereinbefore in part recited indenture of mortgage of the day of , and thereby granted and demised to the said (*mortgagee*), his executors, administrators and assigns, for the said term of years, as hereinbefore is mentioned, with all and singular the rights, members, appendages and appurtenances to the same premises respectively belonging; and all the estate, right, title, interest, term and terms for years now to come and unexpired, trust, property, possession, claim and demand

WITNESS. That in consideration of mortgage money,

the mortgagee assigns

the premises comprised in the mortgage deed.

ASSIGNMENTS.

Mortgage term to attend (purchaser).

whatsoever, both at law and in equity, or otherwise howsoever, of them the said (*mortgagee*) and (*vendor*) respectively, of, in and to the same premises, and every or any part thereof, together also with the hereinbefore in part recited indenture of demise or mortgage, and all assignments (if any) thereof. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments and [all and singular other the] premises [hereby assigned or otherwise assured, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances] unto the said (*trustee*), his executors, administrators and assigns, from henceforth, for and during all the residue or remainder which is or may be now to come and unexpired, by efflux and computation of time, of and in the said term of years [in and by the said hereinbefore in part recited indenture of the day of expressed to be demised to the said (*mortgagee*) as aforesaid]; BUT IN TRUST nevertheless for the said (*purchaser*), his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint concerning the same or any part thereof; and in the mean time, and until such assignment, disposition or appointment shall be made, and when made then subject thereto, IN TRUST, and to the intent that the residue for the time being of the term and estate hereby expressed or intended to be assigned, shall and may attend and wait upon the freehold, reversion and inheritance of the lands, tenements and hereditaments, and premises therein comprised, for the sole use and benefit of the said (*purchaser*), his heirs and assigns, in order to protect and defend the said messuages, lands, tenements and hereditaments from and against all subsequent and intermediate encumbrances, if any such there be; [and IN TRUST that he the said (*trustee*), his executors, administrators and assigns, shall and do permit and cause the said term and estate to be used and disposed of for that purpose accordingly]. (*Add a covenant by the mortgagee that he has not done any act to encumber* (1)). IN WITNESS, &c.

To hold to the trustee for the residue of the term.

In trust to attend the inheritance of purchaser.

Covenant to be inserted.

(1) See the form of this covenant, *ante*, p. 548.

ASSIGNMENTS.

Term to attend (mortgagee).

No. CLVI.

An Assignment of an outstanding Term, *as a collateral Security to a* Mortgagee (1).

Variations where it is assigned as a security to an Annuitant. Where a part only of the premises comprised in the term is mortgaged.

THIS INDENTURE of parts, made the day of [* in the year of the reign, &c. and] in the year of our Lord 18 , Between the (*termor*) of, &c. of the first part, (*the mortgagor*) (2) of, &c. of the second part, (*the mortgagee*) of, &c. of the third part, and (*the trustee*) of, &c. a trustee named and appointed by and on the part of the said (*mortgagee*), for the purposes hereinafter expressed, of the fourth part. WHEREAS, &c. (3) AND WHEREAS the said (*mortgagor*) (4) hath agreed with the said (*mortgagee*) for the loan of the sum

Parties.

Recital of mortgage of even date.

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(1) Where there are satisfied terms outstanding, it will be adviseable that the mortgagee should have them assigned to a trustee of his own, in order to prevent any subsequent encumbrancer (without notice) from availing himself of them; Evans v. Bicknell, 6 Ves. 183; Ex parte Knott, 11 ib. 613; sometimes, however, a declaration is inserted in the mortgage deed, that all outstanding terms shall be holden in trust for the mortgagee; but as this will give him no more power over the terms than he possessed before, and as a subsequent mortgagee may equally avail himself of them, it is a mode which cannot be depended upon.

Mortgagee should take assignment of outstanding term.

* If brevity be particularly desired, those parts of the precedent within brackets may be omitted.

Brevity.

(2) If the term be assigned as a collateral security, for the purpose of securing the payment of an annuity (see MOD. PREC. Vol. VI. p. 104. n. (1)) make the grantor a party of the second part, the grantee of the third part, and the trustee of the fourth part.

Annuity.

(3) Recite here the deed creating the term, and also the assignment of it to the present termor; the form of these recitals will be found, *ante*, p. 542.

Recitals.

(4) If the term be assigned as a collateral security for the payment of an annuity, recite here the contract for, and grant of annuity, as follows:

Annuity.

"AND WHEREAS the said (*grantee*) hath agreed with the said (*grantor*) for the purchase of an annuity, or clear yearly sum of

ASSIGNMENTS.

Term to attend (mortgagee).

of £ at interest; and by indentures of lease and release, the lease bearing date the day next before the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the said (*mortgagor*), in consideration of the said sum of £ paid to him by the said (*mortgagee*), hath granted and released all and singular (1) the messuages, lands, tenements, and hereditaments comprised in the hereinbefore in part recited indenture of the day of unto and to the use of the said (*mortgagee*), his heirs and assigns, but subject to a condition or agreement for redemption and conveyance of the same premises, upon re-payment of the said sum of £ , with interest for the same after the rate of £5 per cent. per annum, on the day of now next ensuing. AND WHEREAS it has been agreed, that the residue of the said term of years of and in the said

Agreement for assignment of term.

£ for the life of the said (*grantor*); and by an indenture bearing or intended to bear even date with these presents, and made or expressed to be made between the said (*grantor*) of the first part, the said (*grantee*) of the second part, and the said (*grantee's trustee*) of the third part, the said (*grantor*), in consideration of the sum of £ , to be paid to him by the said (*grantee*), hath granted the said annuity, or yearly sum of £ for the life of the said (*grantor*) unto the said (*grantee*), his executors, administrators, and assigns; and for better securing the payment thereof, hath also demised all and singular the messuages, lands, tenements, and hereditaments hereinbefore, and in the said in part recited indenture of the day of described, unto the said (*grantee's trustee*), his executors, administrators, and assigns, for the term of 500 years, upon certain trusts therein declared concerning the same. AND WHEREAS it hath been agreed by and between the said (*grantor*) and (*grantee*), that the residue of the said term of years should be assigned to the said (*trustee party hereto*), upon trust to attend the estate and interest of him the said (*grantee*) in the said premises under or by virtue of the said indenture of even date herewith, in the manner hereinafter declared concerning the same."

Part of premises mortgaged.

(1) If part only of the premises comprised in the term be mortgaged, say,

"Granted and released certain messuages, lands, tenements, and hereditaments therein and hereinafter particularly described, being

ASSIGNMENTS.

Term to attend (mortgagee).

lands and hereditaments (1) should be assigned to the said (*trustee*), *in trust* to attend the estate and interest of the said (*mortgagee*) in the manner hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the hereinbefore mentioned agreement [and in consideration of the sum of 10*s.* of lawful money of England, to the said (*termor*) in hand well and truly paid by the said (*trustee*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], HE the said (*termor*), at the request and by the direction of the said (*mortgagor*), and at the nomination of the said *mortgagee*), testified by their severally being parties to these presents, [HATH bargained, sold, assigned, transferred, and set over, and by these presents] DOTH bargain, sell, assign, transfer, and set over, and the said (*mortgagor*), for the consideration mentioned in the said hereinbefore in part recited indenture of release [HATH granted, bargained, sold, assigned, ratified, and confirmed, and by these presents] DOTH grant, bargain, sell, assign, ratify, and confirm unto the said (*trustee*), his executors, administrators, and assigns, ALL those (2) the said several messuages, lands, tenements, and hereditaments, and all and singular other the premises comprised in and expressed to be demised by the first hereinbefore in part recited indenture of mortgage of the day of , and afterwards assigned and transferred unto the said (*termor*) by the said in part recited indenture of assignment as hereinbefore is mentioned, and all the estate, right, title, interest, term or number of years yet to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law

WITNESS.

That in consideration,

the termor assigns

Parcels.

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part and parcel of the messuages, lands, tenements, and hereditaments comprised in the hereinbefore in part recited indenture of the day of ."

(1) If part only of the premises comprised in the term be mortgaged, see *ante*, No. CLII. p. 546, notes.

Part of premises mortgaged.

(2) If part only of the premises comprised in the term be mortgaged, see *ante*, p. 546. n. (2). and add,

Part of premises mortgaged.

" AND which said messuages, lands, tenements, and hereditaments are hereby declared by the said (*mortgagor*) to be, and are intended to be the same messuages, lands, tenements, and hereditaments as in and by the said hereinbefore in part recited indenture of release, of even date herewith, are granted and released, or otherwise assured, or mentioned so to be, unto or for the said (*mortgagee*), his heirs and assigns, in the manner therein mentioned."

ASSIGNMENTS.

Term to attend (mortgagee).

and in equity, and otherwise howsoever, of him the said (*termor*), of, in, to, or respecting the same messuages, lands, tenements, hereditaments, and premises, and every or any part thereof; together with the said several hereinbefore in part recited indentures of demise and assignment, and all benefit and advantage incident or belonging to the same, or either of them, or to the covenants and agreements therein respectively contained. To HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, and [all and singular other the] premises [hereby assigned, or otherwise assured, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances,] unto the said (*trustee*), his executors, administrators, and assigns, from henceforth, for and during all the residue and remainder which is or may be yet to come and unexpired of or in the said term of

To hold to the trustee for the residue of the term.

years [in and by the hereinbefore in part recited indenture of the day of expressed to be demised to the said (*original mortgagee*), as aforesaid,] BUT IN TRUST (1) nevertheless for the said (*mortgagee*), his heirs, executors, administrators, and assigns, for the better securing to him and them the repayment of the said sum of £ and interest, according to the purport and true intent and meaning of the said in part recited indenture of release of even date herewith, and from time to time to be used and disposed of for that purpose, as occasion may require; and from and after such payment thereof, and in the mean time subject thereto, IN TRUST for the said (*mortgagor*), his heirs and assigns, to the intent that the residue for the time being of the said term and estate

In trust for mortgagee.

Annuity.

(1) If the term be assigned as a collateral security for the purpose of securing the payment of an annuity, say,

"IN TRUST nevertheless for the said (*grantee*), his executors, administrators, and assigns, for the better securing to him and them the payment of the said annuity or yearly sum of £ , and all costs and expences which may be incurred by reason thereof, according to the true intent and meaning of the said in part recited indenture of even date herewith, and from time to time to be used and disposed of for that purpose as occasion may require, and subject thereto, IN TRUST for the said (*grantor*), his heirs and assigns, or such other person or persons who for the time being shall be seised of or entitled to the reversion, freehold, and inheritance of the same premises, to the intent, &c." *as above.*

ASSIGNMENTS.

Term to attend (mortgagee).

hereby expressed or intended to be assigned, shall and may attend and wait upon the reversion and inheritance of the lands, tenements, hereditaments, and premises therein comprised, in order to protect and defend the same from and against all subsequent and intermediate encumbrances, if any such there be; [and IN TRUST that he the said (*trustee*), his executors, administrators, and assigns, shall and do permit, and cause the said term and estate to be used and disposed of for that purpose accordingly]. (*Add a covenant by the termor that he has not done any act to encumber.*) (1). IN WITNESS, &c.

(1) The form of this covenant will be found *ante*, p. 548.

ASSIGNMENTS.

Term to attend (settlement).

No. CLVII.

**An Assignment of an outstanding* Term (*by indorsement* (1) *on a previous assignment*) *to attend the* uses of a Marriage *Settlement* (2).

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 . BETWEEN (*the present trustee*) of, &c. of the first part, (*the intended husband*) of, &c. [and his wife, *if the estate be her's*] of the second part, and (*the new trustee*) of, &c. of the third part. WHEREAS in or by virtue of the within written indenture, or otherwise, the within mentioned messuages or tenements, lands and hereditaments, were assigned to and are now vested in the within named (*present trustee*) for the residue of the within mentioned term of years then to come therein. IN TRUST nevertheless for the said (*intended husband*) and his heirs, and to be at all times and from time to time attendant upon the inheritance of the same hereditaments.

Recital of marriage settlement.

AND whereas by indentures of lease and release, the lease bearing date the day next before the date of the release, and the release bearing, or intended to bear even date herewith, and made or expressed to be made between, &c. and being, or purporting to be a settlement made in contemplation of a marriage intended forthwith to take place between [the said] (*intended husband*) and [the said] (*in-*

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(1) If the assignment be made by a separate instrument, recite the deed by which the term was created, &c. as *ante*, p. 542.

(2) It has not generally been considered necessary, until the late case of Doe dem. Putland v. Hilder, to assign an outstanding term, already attendant upon the inheritance, to a new trustee expressly to attend the uses of a settlement; but since that case (in which the Court of King's Bench expressed an opinion, that unless such a term was either so assigned or noticed by the deed of settlement, or by some separate instrument, by way of declaring its attendance upon those uses, it might afterwards be made an instrument of defeating the settlement), it is evidently become proper, that such assignment or declaration of uses should hereafter be made.

ASSIGNMENTS.

Term to attend (settlement).

tended wife), and executed immediately before the sealing and delivery hereof, the said messuages or tenements, lands and hereditaments were [amongst others] granted, released, or otherwise assured to (*trustees of the settlement*) therein named, and their heirs, to, for and upon the several uses, trusts, intents and purposes therein expressed concerning the same, as in and by the said indenture of release, relation being thereunto had will more fully appear. AND WHEREAS at or previously to the time of executing the said in part recited indentures of lease and release, it was agreed that the said term should be assigned to the said (*new trustee*), for the purpose of becoming subservient to the uses and trusts expressed concerning the reversion and inheritance of the hereditaments comprised therein. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and for and in consideration of the said intended marriage, [and also in consideration of the sum of 10*s.* of lawful English money to the said (*present trustee*) in hand paid by the said (*new trustee*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], he the said (*present trustee*), at the request and by the direction and appointment of the said (*intended husband*), testified by his being a party hereunto, HATH bargained, sold, assigned, transferred and set over, and by these presents DOTH bargain, sell, assign, transfer and set over, and the said (*intended husband*) HATH assigned, ratified and confirmed, and by these presents DOTH assign, ratify and confirm unto the said (*new trustee*) ALL those the several messuages or tenements, lands, hereditaments and other the premises in or by the within written indenture assigned to or otherwise vested in him the said (*present trustee*) as within is mentioned, with all and every the rights, easements, members and appurtenants to the same hereditaments and premises, or any of them, or any part thereof belonging or appertaining, AND all the estate, right, title, interest, term of years yet to come, property, claim and demand whatsoever, of them the said (*present trustee*) and (*intended husband*), or of either of them, in, or to the said hereditaments and premises, or any part thereof, by virtue of the within written indenture, or any indenture or instrument therein recited, or otherwise howsoever, together with the said within written indenture, and all mesne assignments if any thereof. TO HAVE AND TO HOLD the messuages or tenements, lands, hereditaments, and all and singular other the premises hereinbefore assigned or otherwise assured, or intended so to be, with their and every of their appurtenants, unto and by him the said (*new trustee*), his executors, administrators and assigns, from henceforth, for and during all the residue and

WITNESS. Termor assigns to new trustee.

To hold to new trustee to attend uses of settlement.

ASSIGNMENTS.

Term to attend (settlement).

remainder of the said within mentioned term of years which is now to come and unexpired by effluxion of time. BUT NEVERTHELESS IN TRUST to attend, wait upon, and be subservient to the several estates, uses, trusts, intents and purposes in or by the hereinbefore in part recited indenture of release or settlement created, declared or expressed of or concerning the same hereditaments and premises, and the reversion and inheritance thereof, to and for the end and intent of protecting the same hereditaments, uses and estates from and against all mesne encumbrances, if any such there be. AND, &c. [*covenant by present trustee that he has not encumbered*] (1). IN WITNESS, &c.

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(1) See *ante*, p. 548.

No. CLVIII.

Directions by a Mortgagor, *or an Annuitant, for the* Attornment *of Tenants* (1) *to secure Arrears—(indorsed on the Deed).*

Variation where it is ordered by assignees of a bankrupt.

To ALL TO WHOM IT MAY CONCERN the within named (*mortgagor or annuitant*) SENDS GREETING. WHEREAS there is now due to the within named (*mortgagee or annuitant*) under the within written indenture the sum of £ , [for which he hath obtained judgment in ejectment (*or as the case may be*)] as of term last. NOW KNOW YE, that for the better raising and satisfying the arrears of the said interest [*or* annuity], the said (*mortgagor or annuitant*) doth hereby direct the several tenants of the messuages, lands, and hereditaments within described, to attorn and become tenants of the same to the said (*mortgagee or annuitant*), and pay the rents, and arrears of rent due and to become due in respect thereof to him the said (*mortgagee or annuitant*), his executors, administrators and assigns, from henceforth, until all arrears of the said interest [*or* annuity] now due, and which shall hereafter grow due in respect

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(1) Attornments by tenants were formerly very common, but being rendered unnecessary by 4 and 5 An. c. 16. and 11 Geo. 2. c. 19. they are now seldom had recourse to, unless for the purpose of creating a privity of estate between tenants and a new landlord under a mortgage, or the like, in order to enable him to distrain for rent in arrear, in cases where he otherwise could not; or where the tenants claim under a lease granted by the mortgagor subsequently to his having executed a mortgage deed, when the attornment of the tenants to the mortgagee will, by creating a holding of the mortgagee, give him a power of distress, and to which the tenants are generally consenting rather than be evicted under an ejectment; or where the mortgagor is in the possession of the premises mortgaged, when he sometimes attorns to the mortgagee, as his tenant at *interest* rent; so also attornments are sometimes directed to be made to receivers appointed by the Court of Chancery; and by assignees of a bankrupt mortgagor; and on recoveries in ejectment an attornment is likewise often procured of the tenants to prevent the expences of a writ of possession; I have therefore, notwithstanding the above acts, inserted forms to serve as precedents in those cases.

ATTORNMENTS.
Tenants (to Mortgagee, &c.)

of the said principal money [*or* annuity], and also all costs and charges incurred or to be incurred, at law or in equity, in anywise relating to the same, whereof due notice to you respectively shall be given by me. [AND the said (*mortgagor or annuitant*) doth hereby further direct and agree that the said (*mortgagee or annuitant*), his executors, administrators and assigns, shall and may let all such parts of the said premises as now are, or shall at any time hereafter be untenanted, to any person or persons whomsoever, for the best or other sufficient yearly rent or rents, without any premium or foregift being taken for the same.] IN WITNESS, &c. (1)

(*mortgagor or annuitant*).

Assignees of Bankrupt.

(1) If the directions to attorn be given by the assignees of a bankrupt mortgagor, vary the form, thus,

"TO ALL TO WHOM, &c. *as above*, We (*assignees*) being the assignees of the within mentioned premises under a commission of bankrupt, bearing date, &c. awarded and issued against the within named (*mortgagor*), SEND GREETING, WHEREAS, &c. NOW KNOW, &c. *proceeding as above, mutatis mutandis, and concluding with*, AND for your so doing these presents shall be to every of you a sufficient authority and indemnity."

Stamp.

*** No stamp should seem to be necessary upon the above directions, or on the subsequent attornments, they not being expressly mentioned in stat. 55 Geo. III. c. 184. nor appearing to come within the description of any of the instruments requiring a stamp under that act, unless where the attornment contain also an AGREEMENT on the part of the tenants, in which case, quære, whether it should not be impressed with a stamp duty of £1, if the annual rent of the premises exceed £20.

No. CLIX.

**An Attornment by* Tenants *to a* Mortgagee *where their leases were subsequent to the mortgage* (1).

BE IT KNOWN TO ALL WHOM IT MAY CONCERN, that we whose names are hereunto subscribed, being tenants in possession of the several messuages or farms and lands mentioned opposite to our respective names in the schedule hereunder written, by virtue of certain indentures of lease to us respectively granted by (*mortgagor*) of, &c. (ALL of which said leases bear date subsequently to the date of a certain indenture, produced to us respectively bearing date the day of , and purporting to be a mortgage of the said hereditaments by the said (*mortgagor*) to (*mortgagee*) of, &c. Do and each of us by the direction of the said (*mortgagor*) (testified by his signing hereof), DOTH hereby severally attorn and become tenants of the said several messuages, farms, and lands unto him the said (*mortgagee*). AND we do hereby severally undertake and agree, by such direction as aforesaid, to pay over our several rents, when and as often as the same shall respectively become due, unto him the said (*mortgagee*), his appointees or assigns, until legal notice shall be to us respectively given to the contrary. In testimony of which said attornment and tenancy we have severally paid unto the said (*mortgagee*) the sum of one shilling in the name of attornment, and in part of the rents so due or to become due and payable from us respectively as aforesaid. As witness our hands, this day of .

WITNESS

(*tenants*).

(1) See *ante*, p. 571. n. (1).

SCHEDULE

ABOVE REFERRED TO.

Names of Tenants.	Names and situation of Messuages, &c.	Rent.	When payable.

ATTORNMENTS.

Tenants (in ejectment).

No. CLX.

An Attornment by Tenants to a Mortgagee *or other person after* Judgment *in Ejectment* (1).

BE IT KNOWN UNTO ALL WHOM IT MAY CONCERN, that declarations on the demise of (*mortgagee*) of, &c. in ejectment, having been delivered to each of us whose names and seals are hereunto subscribed and set, (being respectively tenants or occupiers of or from (*mortgagor*) of, &c. of the messuages, farms and lands mentioned opposite to our respective names in the schedule hereunder written), in order to the recovering possession of the same premises. AND whereas the said (*mortgagor*), after notice of such declaration in ejectment, hath as we are advised suffered judgment by default to be entered of record for the plaintiff in ejectment, or his lessors in the said action. NOW KNOW YE, that we whose names are so subscribed and seals affixed as aforesaid have, and each of us (so far as respects the messuage or messuages, farm and lands mentioned opposite to our respective names in the schedule to these presents, and now in the occupation of himself, or his under tenant, at the yearly rent therein mentioned), hath attorned and become tenants and tenant, and by these presents do, and each of us doth attorn and become tenants and tenant to the said (*mortgagee*) for and in respect of the same several messuages, farms and lands, and every of them [and in testimony of such attornment, we the said several tenants, parties hereto, have paid to the said (*mortgagee*) the sum of sixpence each. And we do hereby promise and agree henceforth severally to pay, or cause to be paid, our respective rents due and payable, and to become due and payable for the said respective farms, lands and hereditaments set forth in the said schedule to the said (*mortgagee*), his executors, adminis-

(1) See *ante*, p. 571. n. (1).

trators or assigns; and shall and will, on the several expirations of their respective leases or tenancies, deliver up the possession of the premises by us held respectively to the said (*mortgagee*), and not to any other person or persons, unless otherwise compelled or directed by the judgment, order or decree of some court of law or equity.] IN WITNESS, &c.

ATTORNMENTS.
Tenants (in ejectment).

(*tenants*).

SCHEDULE

ABOVE REFERRED TO.

See form given *ante*, p. 573.

ATTORNMENTS.

Mortgagor (to Mortgagee).

No. CLXI.

**An Attornment by a* Mortgagor *in Possession to the Mortgagee at a Specific Rent, to be indorsed upon or subjoined to the Appointment of a Receiver* (1).

KNOW ALL MEN BY THESE PRESENTS, under the hand and seal of me the within [*or* above] named (*mortgagor*), THAT for the better enabling the within [*or* above] named (*mortgagee*) to receive the interest of the within [*or* above] named sum of £ , at such time and in such manner as is within [*or* above] mentioned, by and out of the rents, issues, and profits of the within [*or* above] described messuages or tenements and hereditaments, or so much and such part or parts thereof as are or is now in the occupation of me the said (*mortgagor*), I the said (*mortgagor*) do hereby attorn and become tenant to the said (*mortgagee*), his heirs [*or* executors, administrators, *if the premises be leased*] and assigns, of the same premises at the yearly rent of £ , to be paid half-yearly, that is to say, on the day of, &c. and the day of in every year, during so long time as the said sum of £ or any part thereof shall remain secured upon the said hereditaments; but subject nevertheless to the proviso within [*or* above] contained, prohibiting the within [*or* above] mentioned (*receiver*) from receiving or demanding the said rents, issues, and profits, or any part thereof, until six months' interest upon the said principal sum remaining due for the time being, shall be in arrear and unpaid to the said (*mortgagee*), his executors, administrators, or assigns. IN WITNESS, &c.

(*mortgagor*).

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(1) See *ante*, p. 571. n. (1).

No. CLXII.

*An Attornment of a Tenant to the Lessor of the Plaintiff in Ejectment (1).

In the Common Pleas [*or as the case may be*].

JOHN DOE, on the demise of (*mortgagee*), plaintiff,
and
(*mortgagor*) defendant.

TO ALL TO WHOM IT MAY CONCERN, KNOW YE that I, whose name is hereunder written as signing hereof, being tenant in possession of the messuage and premises in question in the above cause, situated and being in the parish of in the county of , do hereby attorn tenant to (*mortgagee*) of, &c. lessor of the plaintiff in the said cause, of the said messuages and premises so in my possession. AND that I have this day paid to the said (*mortgagee*) the sum of one shilling in the name of attornment, and on account and in part of the rent due, and to become due from me, for or in respect of the said premises. AND that I do hereby accordingly become tenant thereof to the said (*mortgagee*) from the day of last past. As witness my hand this day of in the year of our Lord .

WITNESS

(*tenants*).

(1) See *ante*, p. 571. n. (1).

AWARD.

Arbitrators (general differences).

No. CLXIII.

An Award by Arbitrators *concerning matters in difference* (1).

Recital of deed of submission.

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, WE (*the arbitrators*) of, &c. send greeting. WHEREAS by an indenture (2) bearing date on or about the day of last past, and made or expressed to be made between A. B. (*one of the parties in difference*) of, &c. of the one part, and C. D. (*the other party in difference*) of, &c. of the other part, reciting that various

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Requisites.

(1) The form of an award is immaterial so that its essential requisites be regarded—these are, that it be a final adjustment of the matter in dispute; that it be so certain in its terms as not to give rise to any new question; that it be of a thing possible to be performed; and that it be consonant with law and with reason; see Pedley v. Gooddard, 7 Durnf. and E. 73; Smith v. Johnson, 15 East, 213; Wohlenberg v. Lageman, 6 Taunt. 254. 1 Marsh. 579. S. C.; and see Kyd on Awards, *passim*; also Caldw. Arbitr. c. v.

The subject-matter of awards may be of infinite variety: but the general form being in all cases the same, I have inserted only a few adapted to the most usual subjects of reference.

Submission by bonds.

(2) If the submission be by mutual bonds, say,

"WHEREAS by mutual bonds or obligations in writing, under the respective hands and seals of the said (*parties in difference*), bearing date respectively the day of last past, each of them the said (*parties in difference*) became bounden for himself, and his heirs, unto the other of them, his executors, administrators, and assigns, in the penal sum of £ , with conditions thereunder written to stand to, obey, abide by, fulfil, and keep the award and final determination of us the said (*arbitrators*) in relation to the disputes then subsisting between them the said (*parties in difference*), so that the award of us the said (*arbitrators*) should be made in writing, under our hands and seals, within the space of one calendar month from the date of the said bonds."

AWARD.

Arbitrators (general differences).

differences had arisen between the said parties in difference, relative to the matters therein mentioned, and that a suit in equity was then depending concerning the same, they the said (*parties in difference*) mutually agreed to refer the disputes then subsisting between them (1), to the determination of us the said (*arbitrators*) so that we should make our award in writing under our hands and seals, within the space of one calendar month from the date of the said indenture. AND it was thereby further agreed, that we should have full power and authority, if we should think proper, to order the dismissal of any suit, which should be then depending between the said parties, and to decree a conveyance from either of the said parties, to the other of them, of the messuages therein and hereinafter mentioned, and to direct the consideration money to be paid upon the execution thereof, and also to award the payment by either of the said parties, of the costs and expences of the said reference (2). NOW KNOW YE, that we the said (*arbitrators*) having taken upon ourselves the burthen of the said arbitration, and having heard and duly weighed the allegations of both of the said parties concerning the matters so in difference as aforesaid, and examined the various vouchers, documents, and evidences relative thereto, Do, by these presents in writing under our respective hands and seals, arbitrate, award (3), order, adjudge, and determine, that all disputes and differences, now or heretofore subsisting between, or by the said (*parties in difference*) relative to the matters and things referred to us in and by the hereinbefore in part recited indenture, shall henceforth cease and determine. AND we the said (*arbitrators*) do hereby further award,

Award that all differences shall cease.

Dismissal of suit.

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(1) An award need not set forth the authority of the arbitrators, for being created by the parties, they are presumed to be cognizant of it; Shirggins v. Nash, 5 Maul. and Sel. 193.

(2) If the time for making the award has been enlarged by the consent of the parties, add,

Enlargement of time.

"AND WHEREAS by a writing under the hands of the said (*parties in difference*) indorsed on the hereinbefore in part recited indenture, and bearing date the day of last past, the time in the said indenture limited for our making our award, was enlarged until the day of thence next ensuing."

And an award made within such enlarged time will be good. Davies v. Vaas, 15 East, 97; although it do not recite that the time was enlarged; George v. Lousely, 8 ibid. 13.

An award on enlargement of time good.

(3) The award must be so made as to accord with and pursue the submission, or it will be void as irrelevant or uncertain; Hide v. Petit, 1 Ch. Ca. 186.

Award must conform to submission.

AWARD.

Arbitrators (general differences).

order, adjudge, and determine, that the said suit so now depending as aforesaid, and all actions and proceedings at law and in equity now depending between the said (*parties in difference*) relative to, or concerning any of the matters or things aforesaid, shall forthwith be dismissed, and for ever discontinued (1); and that the same, or the subject-matter thereof, shall not be revived, or brought into discussion in any manner howsoever by them, or either of them, or their respective heirs, executors, administrators, or assigns. AND that the sum of £ (2), being the principal sum of £ , with interest computed thereon after the rate of per cent. claimed by the said A. B. as due to him from the said C. D. for rent due in respect of the house and premises now in the occupation of the said C. D., shall be paid to him by the said C. D. on or before the day of next. AND we the said (*arbitrators*) do hereby further award, order, adjudge, and determine, that full and sufficient releases (3) shall be executed by each of them the said parties to the other of them, of and concerning the same, and all and every other the matters and things so in difference, and to us referred as aforesaid, on or before the day of now next ensuing, at the mutual expence of the said parties. AND we do further order and adjudge, that the said A. B. shall, on or before the day of , at the costs and expense of the said C. D., execute such a good and effectual conveyance (4) and assurance as the counsel in the law of the said C. D. shall advise and approve, of the messuage or tenement now in the occupation of the said A. B., and situated at aforesaid, unto, and to and for the

Payment of a sum of money.

Mutual releases.

Conveyance.

Award to discontinue suit, good.

(1) An award restraining the parties from proceeding at law or in equity, if made a rule of Court, seems to be good: Lingood v. Croucher, 2 Atk. 395; sed vide Hutchinson v. Hodgson, 2 Anst. 361; Lonsdale v. Littledale, 8 Ves. 451; so the dismissal of a bill in equity, or other suit, may be awarded; Herbert v. Bulkeley, Ca. Temp. Hardw. 296.

Interest may be awarded upon arrears of interest.

(2) If a sum of money be awarded to be paid on a certain day, it will carry interest from that time if then demanded; Pinhorn v. Tuckington, 3 Campb. 486; and although interest is not in general allowed to be computed upon arrears of interest, yet it will be payable if awarded by arbitrators on a reference; Morgan v. Mather, 2 Ves. Jun. 15, 22.

Award of mutual releases, good.

(3) An award of mutual releases to be executed by the parties is good; Keen v. Godwin, Bunb. 250; and so of releases by way of conveyance; Hall v. Hardy, 3 P. Wms. 187. 190; Ridout v. Pain, 1 Ves. 10; so of a bond to convey at a future time, unless in case of an infant; Cavendish's Ca. 1 Ch. Ca. 279; and see Evans v. Cogan, 2 P. Wms. 450.

Award does not pass property.

(4) The property does not pass by a mere award of it, even though it be personalty; Hunter v. Rice, 15 East, 100; a conveyance to the party is therefore necessary.

AWARD.
Arbitrators (general differences).

use and benefit of him the said C. D., or as he shall direct; and that he the said C. D. shall, upon the execution of the said conveyance and assurance, pay unto the said A. B. the sum of £ , as a consideration for the same. AND lastly, we do order, award, adjudge, and determine, that the costs (1), charges, and expenses of the said reference, and of the said suit, and all matters relative to the said arbitration, and of this our award, which we adjudge to amount in the whole to the sum of £ , shall be borne and paid by the said (*parties in difference*) in equal moieties and proportions. IN WITNESS, &c.

Costs.

WITNESS, &c.

(*two witnesses*). (*arbitrators and seals*).

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(1) If no directions be given by the arbitrators respecting the costs of the award, they must be paid by the parties equally; Grove v. Cox, 1 Taunt. 165; and see Strutt v. Rogers, 7 ibid. 213.

Costs.

*** By the act 55 Geo. III. c. 184. the distinction as to the stamp, between an award being under hand, or under seal, and being delivered as a deed, or as an award, is done away, and in either case the duty is £1 15*s*. with the further progressive duty of £1 5*s*. for every 1080 words beyond the first 1080.

Stamp.

AWARD.

Accounts (Chancery order).

No. CLXIV.

**An Award under a Submission, by order of the Lord Chancellor, adjusting a Balance of* Accounts (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, we (*arbitrators*) of &c., send greeting. WHEREAS by a certain order made by the Lord High Chancellor of Great Britain, on the day of in the year of the reign of his present Majesty King George the Fourth, in a certain cause then depending in the High Court of Chancery, wherein was the plaintiff, and was the defendant, it was, by the consent of the said parties and their respective counsel, ordered, among other things, that all accounts between the said plaintiff and defendant, should be settled and the balance paid to the defendant immediately on such settlement, and that the said accounts should be referred to being respectively solicitors for the said plaintiff and defendant, who, in case of differing, were to choose a third person: AND whereas having taken upon ourselves the settlement of the said accounts, and having heard and duly considered the allegations, vouchers and proofs of the said parties, we have mutually agreed upon and settled the said accounts, and do hereby award, adjudge and declare the balance due from the said plaintiff to the said defendant upon such settlement, and to be at the time of the order the sum of £ ; but it appearing that the sum of £ has been paid by the said plaintiff to the said defendant, between the date of the said order and of this our award, as part of and toward the sum of money which might be found due on such settlement; we do further declare and award, that the sum now remaining due to be paid by the said plaintiff to the said defendant, as the balance of the said accounts, is £ only, and no more. IN WITNESS, &c.

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(1) See notes to No. CLXIII. *ante*, p. 578.

No. CLXV.

**An Award on a* Judge's Order *of reference to an arbitrator* (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, (*arbitrator*) of SEND GREETING: WHEREAS by an order of the Right Honourable Chief Justice of his Majesty's Court of at Westminster, dated the day of last, and made in a certain cause then and now depending in the same Court, wherein is plaintiff and is defendant; the said Justice, upon hearing the attornies or agents on both sides, and by their consent, did order (amongst other things) that all matters in difference between the parties in the said cause should be referred to the award, order, arbitrament, final end and determination of me the said (*arbitrator*), so as I should make and publish my award in writing of and concerning the premises on or before the day of then and now next; and by the like consent the said Justice did further order, that the parties and their respective witnesses might be examined upon oath, to be sworn before any judge of the said Court, or a commissioner for taking affidavits in the said Court, and that the parties should produce before me all books, papers and writings in their custody or power touching the matters in question; and that the said order should be made a rule of the said Court of if the same Court should *so please*, as on reference to the said order more fully appears: NOW KNOW YE, that I the said (*arbitrator*) having taken upon me the burthen of the said arbitrament, and having heard, examined and considered the allegations and proofs of both the said parties concerning the premises, do thereupon award, adjudge and determine, that all further proceedings in the said cause shall from henceforth cease, and be no further prosecuted; and that the said (*defendant*) shall and do, on the day of instant, between the hours of , and of the clock of the same day, well and truly pay, or cause to be paid unto the said (*plaintiff*) or his attorney, the sum of £ of lawful money of Great Britain, in

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(1) See *ante* p. CLXIII. p. 578, notes.

AWARD. *Judge's Order.*

full of all demands in the said cause (1); and that upon payment thereof the said (*plaintiff*) shall, if required so to do, by and at the costs of the said (*defendant*) execute and deliver to him the said (*defendant*) a general release in writing of all and all manner of action and actions, cause and causes of action, debts, duties, claims and demands whatsoever, relative to the matters in question, from the beginning of the world until the day of the date of the aforesaid order; and lastly, I do award and direct that each of them, the said (*plaintiff*) and (*defendant*), shall and do bear and pay his own costs of the reference of this award. In witness whereof, I, the said (*arbitrator*), the arbitrator aforesaid, have hereunto set my hand, the day of , 18 .

SIGNED, &c.

Instalments.

(1) If the money is awarded to be paid by instalments, say,

"At the times and in manner following; (that is to say), the sum of £ , parcel of the said sum of £ , together with the costs of the said action, and the said sum of £ , on the day of now next ensuing, between the hours of twelve and two in the afternoon; and the further sum of £ , on the day of now next ensuing, between the same hours: AND I do further award, order, and direct, that the said (*plaintiff*), his executors and administrators, shall and do, within the days after payment of the said last-mentioned sum, seal and deliver to the said (*defendant*), his executors and administrators, a general release of all actions, claims, and demands, up to the day of the date hereof, if such release, prepared at the costs of the said (*defendant*), his executors or administrators, shall be tendered or left for him at the said office, on the said day of , at the time of the payment of the said last-mentioned sum of £ : AND lastly, I do order, award, and direct, that if default shall be made in payment of all, either, or any part of the sums of money herein by me directed to be paid, at the place and times in that behalf appointed, that then and from thenceforth all the monies directed herein to be paid, or so much thereof as shall have then remain unpaid, shall become instantly due and payable; and that the said (*plaintiff*) may immediately use such lawful means for obtaining payment thereof, as he might have done if the whole of the said sum of £ , together with the several costs aforesaid, or such part thereof as shall then remain unpaid, had been herein directed to be paid on the day at which such default shall happen to be made."

AWARD.

Rule of reference.

No. CLXVI.

An Award generally for Defendant *on a Rule of Reference* (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, (*arbitrator*) of, &c., SEND GREETING. WHEREAS, at the sitting of Nisi Prius, held at , in and for the city of , on the day now last past, before the Right Honourable one of the Justices of our Lord the King, assigned to hold pleas before the king himself; it was ordered, in an action then depending between plaintiff, and defendant, by and with the consent of the said plaintiff and defendant, their counsel and attornies, that [*recite to the end of the rule*]: NOW KNOW ALL MEN BY THESE PRESENTS, that I, the said (*arbitrator*), in pursuance of the said order or rule of reference, having fully heard the said parties by themselves or their attornies, touching and relating to the matters in difference between them, and examined their witnesses produced before me upon oath, and having maturely and deliberately considered all the matters to me referred as aforesaid, do find, award, order, adjudge, and determine, in the manner following, (that is to say) that the said (*plaintiff*) had no cause of action against the said (*defendant*), and further that the said (*plaintiff*) do bear and pay the costs of the said reference, and of this my award, to be added to the costs of the said cause to be taxed by the proper officer, and to be paid by the said (*plaintiff*) to the said defendant or his attorney, on the day of , at, &c. in , in the city of . IN WITNESS, &c.

(1) See notes to No. CLXIII. *ante*, p. 578.

AWARD.

Cause depending.

No. CLXVII.

**An Award that all Demands of the Plaintiff have been* satisfied, *and that Judgment be entered for the Defendant* (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, (*arbitrator*), of &c., send greeting. WHEREAS a certain cause depending in his Majesty's Court of , wherein is plaintiff, and defendant, hath been referred and submitted to my award and arbitration (*arbitrator*) to be made within the first days of the present term, and if I should be of opinion for the plaintiff, to award for what sum judgment should be given for him, and when the same should be paid, together with the costs of the cause to be taxed, and the costs of the reference and award, if I should think proper, and for which execution should issue; but if I should be of opinion for the defendant, then judgment as in case of a nonsuit was to be entered, together with the costs of the cause to be taxed, and the costs of the reference and award, if I the said arbitrator should think proper, and for which execution likewise should issue; and it was further understood and agreed, that the costs of the cause were to abide the event of my award, and that the costs of the said reference and award should be at my discretion: NOW KNOW YE, that I the said arbitrator, having taken upon myself the burthen of the said arbitration, and having gone into all differences between the said parties, and heard and examined the allegations, vouchers, proofs and witnesses of the said parties, and having also heard and examined the said plaintiff, who was personally present before me, do, within the time for that purpose appointed, make and publish this my award in writing, of and concerning the premises, as follows, (that is to say) I do award and declare, that I am of opinion for the said defendant, and that the said plaintiff hath been fully paid all demands which he had upon the said defendant

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(1) See notes to No. CLXIII. *ante* p. 578.

AWARD.
Cause depending.

and hath no right to maintain the said action against him; and I do order and direct, that judgment be forthwith entered in the said cause for the said defendant, with the costs of the said cause, and of the reference, and of the making of this my award, to be taxed by the proper officer of the said court: AND I do further award and direct, that the said defendant shall and may take out execution for such costs on the day of next term, if the same shall not be sooner paid. IN WITNESS, &c.

AWARD.

Confirmation of former award.

No. CLXVIII.

**An Award confirming a former Award, sent back to the* Arbitrator *for his reconsideration.*

Recital of order of reference.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*arbitrator*), of, &c. SEND GREETING. WHEREAS by a certain order made at the sitting of, &c. held at, &c. in and for the city of , on the day of in the year of our Lord 18 , and before the Right Honourable Lord , Chief Justice of our Lord the King, assigned to hold pleas before the King himself, in a certain cause then depending in the same Court, wherein was plaintiff and was defendant, it was ordered by the Court, by and with the consent of the said plaintiff and defendant, their counsel and attornies, that the jury should find a verdict for the plaintiff, damages £ , and costs forty shillings, subject to the same order, and the award to be made pursuant thereto; and that all matters in difference in the said cause between the parties should be referred to the award, order, arbitrament, final end and determination of me the said (*arbitrator*), so as I should make and publish my award in writing of and concerning the premises in question on or before the last day but one of term then next ensuing, and that the said parties should perform, fulfil and keep such award so to be made by me the said arbitrator as aforesaid; and that the costs of the cause should abide the event and determination of my said award; and that the costs of the reference should be in the discretion of me the said arbitrator, who should direct and award by whom, and to whom, and in what manner the same should be paid, which said order was afterwards entered, and

Enlargement of time.

made a rule of his Majesty's Court of King's Bench: AND whereas by reason of my being unable to make my award within the time limited by the said order, the time for making my award was, by certain rules of the said Court of King's Bench, from time to time duly enlarged: AND whereas by a certain other rule of the said

AWARD.

Confirmation of former award.

Court of King's Bench, made on next after the octave of the purification of the blessed Virgin Mary, now last past, upon hearing counsel for the plaintiff and defendant, and by their consent, it was ordered, that the time limited for me the said arbitrator to make my award between the said parties should be further enlarged until the first day inclusive of the then next term; And whereas in compliance with the said order and rules, and in pursuance thereof, I the said arbitrator did, on the day of now last past, make and publish my award in writing, of and concerning the matters to me referred, whereby (amongst other things) I ordered and directed a certain sum of money therein mentioned, to be paid by the said defendant to the said plaintiff at a certain time and place therein mentioned: AND whereas after the making and publishing of my said award, and after the time thereby limited for the payment of the money thereby awarded to be paid by the said defendant to the said plaintiff, it was, by a certain other rule of the said Court of King's Bench, made on next after the morrow of the Holy Trinity now last past, ordered that the defendant, upon notice of that rule to be given to him, should upon next after the octave of the Holy Trinity, shew cause why a writ of attachment should not issue against him for his contempt in not paying the sum of £ pursuant to a certain rule and allocatur therein mentioned, and to my said award; AND whereas by a certain other rule of the said Court of King's Bench, made on next after the octave of the Holy Trinity now last past, it was ordered that the said rule be enlarged until the last day but two of the then Trinity term, the defendant thereby consenting to go before the same arbitrator, who was to re-consider the amount of the damages, so as the sum then awarded should be invested in Exchequer bills, and deposited in the Bank of England within a week then next ensuing, in the names of the attornies in the cause for both parties; and that the same should be paid out (either in the whole, or such part as should be awarded) upon such award being made to the attornies for the plaintiff: AND whereas by a certain other rule of the said Court of King's Bench, made on next after three weeks of the Holy Trinity now last past, it was ordered that the rule made in the said cause on next after the morrow of the Holy Trinity, in the then Trinity term, should be further enlarged until the first day of the then next Michaelmas term; and that I the said arbitrator should have until three weeks after the end of the then Trinity term to make my award; and that the costs of the further reference and award should be in my dis-

Recital of former award.

AWARD.

Confirmation of former award.

cretion. Now KNOW YE, that I the said arbitrator, having reconsidered the amount of the damages in pursuance of the said rule for that purpose made, and having heard and duly considered the allegations, proofs and witnesses of the said parties relating thereto, do hereby declare that I see no reason to alter the amount of the said damages, and I do therefore hereby confirm my said former award; and I do order and direct the several Exchequer bills and other securities, wherein the money is invested in pursuance of the said rule in that behalf, to be forthwith delivered over to the attornies for the said plaintiff; And I do further award, order and direct, that the said defendant shall and do pay to , the attorney for the said plaintiff, on behalf and for the use of the said plaintiff, within one week next after notice in writing for that purpose given to the said defendant, or left at his usual place of abode, or at the office of his attorney, , the costs and expences of this second reference, and of stamping and writing and publishing this my further award, such costs and expences to be first taxed by the proper officer of the said Court of King's Bench. IN WITNESS, &c.

AWARD.
Dismissal of suit, &c.

No. CLXIX.

**An Award of dismissal of suit and payment of* Balance *by Part Owners of a Vessel.*

TO ALL TO WHOM, &c. (1). WHEREAS, &c., [*recite the differences and reference*]. NOW KNOW YE, that I the said (*arbitrator*) having duly weighed and considered the matters so to me referred, and the allegations and witnesses on the behalf of both the said parties, DO HEREBY adjudge and declare, that the said (*owners*) were and continued part owners of a certain ship called the , from the time of the purchase, until the sale thereof, made under a decree or order of the Court of Admiralty in a certain cause or proceeding instituted in the said court on a claim of salvage, the said (*one owner*) being owner of parts of the said ship, and the said (*other owner*) of the remaining parts thereof: AND I do award, order, and direct, that all proceedings at law between the said parties be stayed, and no further prosecuted; AND I do further award and adjudge, that there was and is justly due and owing to the said (*one party*) by the said (*other party*) at the date of this my award the sum of £ , which I do order and direct to be paid by equal instalments of part of the said sum at each time, on the days hereinafter mentioned, between the hours of twelve at noon and two in the afternoon, *viz.* the day of , the day of , &c.: AND I do further award, order, and direct, that the said shall and do, on the day of this present month of , pay to the said one moiety of the expence of this my award, and that each of the said parties shall bear and pay his own costs of the said several proceedings at law, and of this reference: AND I do further award, order, and direct, that the debts of the said ship or vessel called the , up to the time of the said sale thereof under the said decree or order,

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(1) See *ante*, p. 578.

AWARD.

Dismissal of suit, &c.

and also the costs incurred, or to be incurred on the part of the said ship, or of the said parties or either of them, in the said suit or proceeding in the said Court of Admiralty, shall be borne and paid in the proportions following, (that is to say) &c.: AND I do further award, order, and direct, that each of the said parties shall and do at all times hereafter, within ten days after notice in writing for that purpose given to him, or left at his then present or last place of abode, by the other of them, deliver to such other a true and just account in writing of all the debts paid and monies received by him in respect of the said ship, subsequent to the date of this my award. IN WITNESS, &c.

AWARD.

Copartnership differences.

No. CLXX.

An Award by Arbitrators *of differences between Copartners in pursuance of their Articles of Copartnership.*

TO ALL TO WHOM these presents shall come, WE (*arbitrators*) of, &c. SEND GREETING, WHEREAS (*copartners*) of, &c. lately carried on the business of together in copartnership at , which copartnership was dissolved by mutual consent on the day of ; and whereof notice was duly given in the London Gazette and otherwise: AND WHEREAS differences have subsisted and still subsist between the said (*copartners*), as to, &c. and they have agreed to submit the same to the final determination of us or our umpire, such umpire to be chosen by us either before or after our consideration of the said differences: AND WHEREAS, before we proceeded upon the consideration of the matters referred to us, we elected and chose (*umpire*) of, &c. to assist us therein as such umpire as aforesaid: AND WHEREAS by two several writings, under the hands of the said (*copartners*), bearing date respectively the day of , and the day of , indorsed upon the bond given by the said (*one copartner*), the time for our making our award was enlarged until the day of instant: NOW KNOW YE, that WE the said (*arbitrators*) having taken upon ourselves the burthen of the said arbitration, and having inspected the copartnership books of account, and having heard, read, and considered the several allegations, vouchers, and proofs brought before us, by and on behalf of the said parties respectively, touching the said matters in difference between them, do make and publish our award and order concerning the premises in the manner following (that is to say), WE find that the said (*one copartner*) is indebted to the said (*other copartner*) in the sum of £ on the face of the general statement of their accounts, subject to a deduction therefrom of the sum of £ to be made upon the execution of the conveyance or assignment hereafter mentioned: AND we award and order that the said (*one copartner*) shall, on the day of

Choice of umpire.

Award.

AWARD.
Copartnership differences.

next, between the hours of ten and twelve of the clock, pay to the said (*other copartner*) the said sum of £ , subject to such deduction as aforesaid, but if on or before the said day of the said (*one copartner*) shall pay and discharge all or any part of the balances due to (*creditors*), creditors of the said firm of (*copartners*) then upon delivery to the said (*other copartner*) at the time and place aforesaid, of proper receipts or discharges for so much as he shall have so paid, the same shall be deemed and taken as payment of so much of the said sum of £ as by the said receipts or discharges shall be expressed to have been received, or otherwise that the said (*one copartner*) shall pay the whole of the said sum of £ (subject nevertheless to such deduction as aforesaid, in the event of the said conveyance being executed) to the said (*other copartner*), who shall thereout pay and satisfy such balances to the several persons aforesaid. Secondly, WE do award and order that all outstanding debts, due from the said firm of (*copartners*), shall be paid and discharged by the said parties in difference in equal moieties. Thirdly, WE award and order that the outstanding bad and doubtful debts amounting to £ , due to the said firm, shall be collected and gotten in, if practicable, by the said (*one copartner*), to whom the said (*other copartner*) shall execute a power of attorney for that purpose, and that one moiety of the net-produce of such debts, after payment of the expences of collecting or suing for the same shall be annually carried by the said (*one copartner*) to the account of the said (*other copartner*). Fourthly, WE do award and order that the said (*one copartner*) or his executors or administrators do and shall, on or before the day of instant, by a proper deed of conveyance, assign and make over a leasehold estate, situate, &c. now in the occupation of the said (*one party*) to the said (*other copartner*), and thereupon the said (*one copartner*) shall be entitled to have the deduction in manner aforesaid of the sum of £ , being one moiety of the improved value of the said premises, as agreed to between them the said (*copartners*), beyond the original purchase-money and the repairs of the same, the expences of which conveyance shall be borne and paid by each of the said parties in equal moieties. Fifthly, WE award and order that after all the aforesaid orders touching the premises shall be duly performed, and after such debts as can be recovered have been collected and gotten in by the said (*one copartner*), and duly carried to account by the said (*other copartner*) as aforesaid, the said parties shall execute mutual general releases between them of all demands relating to the aforesaid mat-

AWARD.
Copartnership differences.

ters in difference. And lastly, WE do award and order that each of the said parties shall pay the expence of the reference to us and of this our award, amounting to the sum of £ , in the following proportions, namely, the said (*one copartner*) shall pay the sum of £ , part thereof, and the said (*other copartner*) shall pay the sum of £ the residue thereof. IN WITNESS, &c.

AWARD.

Dissolution copartnership.

No. CLXXI.

An Award of Dissolution of Partnership.

TO ALL TO WHOM, &c. (1) NOW FIRSTLY I DO AWARD, order, and adjudge, that the said partnership shall be deemed and taken to have ended and been determined on and from the day of , which was in the year of our Lord . SECONDLY, I do award, order, and direct that the said (*one party*), his executors or administrators, shall and may demand, have, and receive, to his or their own use, without the interference of the said (*other party*) all debts due and owing to the said co-partnership from any person whatsoever, and shall and may use the name of the said (*second party*) in any action or suit to be commenced for the recovery of any such debt or demand. THIRDLY, I do award, order and direct, that the said (*first party*), his executors or administrators, shall and do bear, pay, and discharge all debts, demands, damages, and claims whatsoever due or owing by, or which any person hath or can make against the said co-partnership or the said (*second party*) in respect thereof, and shall and do indemnify and keep harmless the said (*second party*) from and against all such debts, demands, damages, and claims, and from and against any loss or damage that may be incurred or sustained by the said (*second party*), by reason of his name being used in any such action or suit so to be commenced as aforesaid, in pursuance of the authority hereby given to the said (*first party*), his executors and administrators. FOURTHLY, I do award, order, and direct, that the said (*second party*) shall and do, at any time or times, upon the request of the said (*first party*), his executors or administrators, deliver up to the said (*first party*), his executors or administrators, all and every the books, papers, and writings which may be in the custody, power, or possession of him the said (*second party*), in anywise relating to or concerning the business of the said co-partnership. IN WITNESS, &c.

(1) See *ante*, p. 578.

AWARD.

Interest money.
(17 *Geo.* 3.)

No. CLXXII.

**An Award by* Arbitrators *or a Nominee appointed for determining the proportion of Interest Money to be paid by the present and succeeding Incumbents, for money borrowed for the purpose of the Act of* 17 *Geo.* 3. *c.* 53 (1).

WE (*arbitrators*) of &c., [*if the arbitrators be appointed by the parties in difference,*] having been appointed by &c. [*or if a nominee appointed by the ordinary,*] I the Rev. A. B. of in the county of and diocese of the Bishop of Clerk,] having been nominated by the said Bishop, pursuant to the power given by an act passed in the seventeenth year of the reign of His Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy," by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses and other necessary buildings and tenements for the use of their benefices, to adjust and determine the matter in dispute between the Reverend clerk, the present incumbent of the rectory, vicarage, &c. of within the said diocese, and the representatives of the last incumbent [*in case of his death,*] or the said [*in case of his resignation or promotion,*] concerning the due proportion to be paid by each of the said parties, of the principal and interest which accrued due within the year in which such death or avoidance happened, according to the direction and true intent and

(1) By the above-mentioned act as amended by 21 ib. c. 66. incumbents of livings upon which there is no commodious house of residence, are empowered, with the consent of the ordinary and patron, to borrow money upon mortgage of the glebe, &c. for erecting such house of residence; and the act directs that in case of any dispute between the present and succeeding incumbent, as to payment of the principal and interest-money, it shall be determined by two indifferent persons, to be named, the one by each party; and that in default of such nominees being appointed within two calendar months, or in case of their not agreeing within one calendar month after they shall have been appointed, the same shall be determined by some neighbouring clergyman, to be nominated by the ordinary, [*for the form of such nomination see post.* "NOMINATION."]

AWARD.

Interest money. (17 *Geo.* 3.)

meaning of the said act. AND having heard and duly considered the said matters so referred to us as aforesaid, do award, adjudge, and determine, That the said shall pay in respect of the interest and principal which became due within the year aforesaid, the sum of £ , and that the said shall pay in respect of the same, the sum of £ , being the remainder thereof, according to the provision and direction of the said act. Given under our hands this day of

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Stamp.

*** No stamp is requisite upon this instrument.

No. CLXXIII.

An Umpirage *or Award made by an Umpire*(1) *appointed by Arbitrators.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, I the undersigned (*umpire*) of, &c. SEND GREETING. WHEREAS by indenture bearing date the day of last past, and made or expressed to be made between (*one of the parties in difference*) of, &c. of the one part, and (*the other party in difference*) of, &c. of the other part, the said (*parties in difference*) mutually agreed to refer the disputes then subsisting between them to the judgment and arbitration of (*the arbitrators*) of, &c. and it was thereby agreed that in case the said (*arbitrators*) should not agree upon their award within the space of one calendar month from the date of the said indenture, they should be at liberty to name and appoint any other indifferent person to be umpire between them, in considering and determining all or any of the premises thereby to them referred. AND WHEREAS the said (*arbitrators*) not being able to agree upon an award (2) to be by them made in relation to the matters so to them referred, by a certain deed-poll under their respective hands bearing date the day of last past, named and appointed me the said (*umpire*) to be umpire between them, relative to the matters so referred to them as aforesaid, and did thereby refer all and singular the matters and things so to them referred unto the judgment and final determination of me the said (*umpire*) accordingly. NOW KNOW YE, that I the said (*umpire*) having taken upon me the burthen of the said umpirage, and having heard and duly weighed the

Recital of deed of submission.

Of appointment of umpire.

Award of the umpire.

(1) The annotations made in the preceding pages (see *ante*, No. CLXIII.) p. 578. upon the subject of an award by arbitrators, may be equally applied to that here given of an award by an umpire.

(2) It is not necessary, though usual, that the umpire should state in his umpirage the disagreement of the arbitrators; Springens v. Nash, 5 Maul. and Sel. 193.

AWARD.
Umpire.

allegations of both the said parties, and the report of the said (*arbitrators*)(1) concerning the matters so in difference between the said parties, and to me referred as aforesaid, and examined the various vou[illegible]ers, documents and evidences relative thereto, Do, by these presents in writing under my hand and seal, arbitrate, award, order, adjudge and determine, that, &c. [*pursue the terms of the award as in ante*, No. CLXIII. *p.* 579. *or as the case may otherwise require.*]

Umpire may proceed on report of arbitrators.

(1) It was formerly holden that an umpire could not proceed on the report of the arbitrators, but must hear the whole matter anew; Tasker v. Keary, 2 Barnardiston, 317; but it has since been decided that he may receive the evidence from them without examining the witnesses, unless, before the making of his award, he were requested to examine them; Hall v. Lawrence, 4 Durnf. and E., 589.

END OF VOL. I.

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